

# CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

## CALIFORNIA'S LAWS AND RULES PERTAINING TO THE DISCIPLINE OF PROFESSIONAL CERTIFICATED PERSONNEL

# 2002



*To ensure that those who educate the  
children of this state are academically  
and professionally prepared.....by  
monitoring fitness-related conduct and  
imposing credential discipline.*

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## **VISION STATEMENT**

To ensure that those who educate the children of this state are academically and professionally prepared.

## **MISSION STATEMENT**

To assure the fully prepared and effective educators all students deserve and our communities require. The Commission will carry out its statutory mandates by:

Conducting regulatory and certification activities

Developing preparation and performance standards in alignment with state adopted academic content standards

Proposing policies in credential-related areas

Conducting research and assessment

**Monitoring fitness-related conduct and imposing credential discipline**

Communicating its efforts and activities to the public

## **NOTE TO READERS**

Please take note that the following sections have been revised since the July 2000 edition of *California's Laws and Rules*:

California Education Code sections 44010, 44230, 44242.5, 44242.7, 44243, 44244, 44244.1, 44245, 44341, 44346.1, 44420, 44421.1, 44421.5, 44423, 44439, and 44440. (Sections 44000.5 and 44002 were added.)

California Code of Regulations section 80303.

Penal Code sections 290, 1000.3, 1203.4, 11105.2, and 11105.3. (Sections 1001.5 and 11166 were added).

Specific Offenses.

Leading Court Decisions has been expanded to include *State of California v. Ushanda D. et al.*

Please also note that this booklet is not intended to be used in place of official publications. Any conflicts in legal authority should be resolved in favor of official legal publications.

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# FOREWORD

This booklet is a collection of the most frequently cited provisions of the California Education, Penal, Health and Safety, and Government Codes; and the California Code of Regulations, as well as leading case citations that govern the imposition of disciplinary action against California credential applicants and holders. It is not intended to be used in place of official law publications, and any conflicts should be resolved in favor of official legal publications.

Last updated in July 2000, this booklet now reflects legislative revisions through the 2001 legislative session. Senate Bill 299 (Chapter 342, Statutes of 2001) made significant changes impacting credential discipline. Among other things, the bill:

- expands enumerated sex offenses to include violations of federal law;
- clarifies the Committee's jurisdiction for initiating investigations;
- strengthens the Committee's ability to access documents to determine credential applicants' and holders' fitness to teach;
- requires a court order to access non-public information in a credential holder's file; and
- augments adverse action options for credential holders who abandon their contract positions.

Substantive authority to impose professional discipline is conferred upon the Commission on Teacher Credentialing by Articles 8 and 9 of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code, also cited as the "Teacher Preparation and Licensing Act of 1970 as amended" or the "Ryan Act".

Procedural standards governing the imposition of professional discipline are set forth in Article 3 of Chapter 2 of the Education Code, commencing at Section 44240. Section 44246 expressly requires compliance with the Administrative Procedures Act [Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code] whenever a hearing is held to deny, suspend, or revoke a credential.

These statutory provisions are further clarified by the Administrative Regulations of the Commission on Teacher Credentialing in Chapter 3 of Part VIII of Title 5 of the California Code of Regulations commencing with Section 80300.

An understanding of the statutes and regulations governing teacher discipline would be incomplete without reference to the 1969 landmark decision of the California State Supreme Court in *Morrison v. State Board of Education* (1 Cal.3d 214), which held that in order for revocation of a credential to be upheld, the conduct of the holder must indicate professional unfitness. That is, there must be a “nexus” between the holder’s conduct and his or her ability to perform the duties associated with the credential held. The standards articulated by the Supreme Court in *Morrison* have been codified by the Commission on Teacher Credentialing in Section 80302 of Title 5 of the California Code of Regulations.

The appropriate evidentiary standard in professional licensing cases was articulated in 1982 in *Ettinger v. Board of Medical Quality Assurance* (135 Cal.App.3d 853), which held that the level of proof required at the administrative level in order to revoke or suspend a license is “clear and convincing to a reasonable certainty,” and not merely a “preponderance of the evidence.”

# PREFACE

This publication is a collection of the statutes, regulations and leading case citations governing the issuance, denial, revocation, suspension, and other invalidation of credentials for reasons related to identification, moral character, and inappropriate conduct for credential applicants and holders. This publication does not deal with other aspects of the education, professional preparation, or licensing of educators. Those matters are governed by other statutes and regulations and should be researched separately.

The relevant statutes and regulations are administered by the Commission on Teacher Credentialing and its statutory committee, the Committee of Credentials, in order to protect the public interest. Staff support is provided by the Division of Professional Practices.

**Questions about the Commission's disciplinary process, and/or rights available to complainants, credential applicants, and credential holders may be directed to:**

**California Commission on Teacher Credentialing**

**Division of Professional Practices**

**1900 Capitol Avenue  
Sacramento, CA  
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The Commission is authorized to deny the issuance of credentials to applicants who do not meet high character standards and to privately admonish, publicly reprove, revoke, or suspend the credentials of persons who, subsequent to the receipt of credentials, fail to maintain high standards of professional fitness and conduct.

This screening, monitoring and disciplinary process represents continuous improvement in the positive identification, detection, and tracking of persons whose presence in the public schools represents potential harm to school children and/or the educational process. A substantial measure of due process protection is provided to credential holders.

Public school employers, parents and/or other private citizens may lodge complaints of misconduct or unfitness against credential holders and have these complaints investigated and judged on their merits. The investigative and deliberative processes are confidential until judgment is reached, in order to protect any persons who may be mistakenly or unjustly charged.

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# EDUCATION CODE

# GENERAL PROVISIONS

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## ADVERSE ACTION DEFINITION

### **44000.5**

An “adverse action” means the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential.

## CREDENTIAL DEFINITION

### **44002**

A “credential” includes a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission.

## EFFECT OF TERMINATION OF PROBATION AND DISMISSAL OF ACCUSATION

### **44008**

(a) Except as provided in subdivision (b) of this section, a termination of probation and dismissal of an accusation or information pursuant to Section 1203.4 of the Penal Code shall not, for the purpose of this division, have any effect.

(b) Notwithstanding any other provision of this code, no person shall be denied a hearing solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

## CONVICTION OF SPECIFIED CRIMES; DEFINITION

### **44009**

(a) A plea or verdict of guilty or finding of guilt by a court in a trial without a jury is deemed to be a conviction within the meaning of Sections 44425, 44436, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of a narcotics offense, as defined in Section 44011, shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907, and 44923, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

## 44009 (cont.)

(b) A plea or verdict of guilty, or finding of guilty by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Section 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907 and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

## SEX OFFENSE

### 44010

“Sex offense”, as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), or (c), of Section 243.4, subdivisions (a) or (d) Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the offenses specified in this section.

(i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

## **44011**

“Controlled substance offense” as used in Sections 44346, 44425, 44436, 44836, and 45123 means any one or more of the following offenses:

## **CONTROLLED SUBSTANCE OFFENSE**

(a) Any offense in Sections 11350 to 11355, inclusive, 11361, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety Code.

(b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

(c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.

## **44011 (cont.)**

### **ADMISSIBILITY OF RECORD OF CONVICTION**

(d) Any attempt to commit any of the above-mentioned offenses.

## **44012**

Any record of conviction of any applicant for, or holder of, a certification document, shall for the purposes of this division, be admissible in evidence in any civil action or administrative proceedings pertaining to the issuance, suspension or revocation of such certification document, any provision of law to the contrary notwithstanding.

# **RIGHTS AND DUTIES**

### **FAILURE TO MAKE REPORTS**

## **44030**

Any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than one hundred dollars (\$100).

# **INFORMATION**

### **INFORMATION; MAINTENANCE FOR PUBLIC DISCLOSURE; APPLICATION**

## **44230**

(a) (1) The commission shall maintain for public record, and may disclose, only the following information relating to the credentials, certificates, permits, or other documents that it issues: the document number, title, term of validity, subjects, authorizations, effective dates, renewal requirements, and restrictions. The commission may also disclose the last known business address of any applicant or credential holder.

(2) Notwithstanding any other provision of law, except as provided for in section 44248, no information, other than that set forth in paragraph (1), may be disclosed by the commission absent an order from a court of competent jurisdiction.

(b) In order to expedite the application process for the benefit of applicants for credentials, certificates, permits, or other documents issued by the commission, the commission may receive from, or transmit to, the agency that submitted the application, either electronically or by printed copy, the information set forth in that application. For purposes of this subdivision, "agency" means a school district, county office of education, or institution of higher education having a commission-approved program of professional preparation.

# CRIMINAL RECORD SUMMARY

## 44237

Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the Commission on Teacher Credentialing or is not currently licensed by another state agency that requires a criminal record summary that directly relates to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.

(b)(1) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) As used in this section, "employment" means the act of engaging the services of a person, who will have contact with pupils, to work in a position at a private school at the elementary or high school level on or after September 30, 1997, on a regular, paid full-time basis, regular, paid part-time basis or paid full- or part-time seasonal basis.

(3) As used in this section, "applicant" means any person who is seriously being considered for employment by an employer.

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her children.

(c)(1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal

**FINGERPRINT;  
PRIVATE  
SCHOOL  
EMPLOYEES;  
CRIMINAL  
RECORD  
INFORMATION;  
LIST OF  
TEACHERS WITH  
REVOKED OR  
SUSPENDED  
CREDENTIALS;  
FEES;  
CONFIDENTIALITY**

**44237 (cont.)**

proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information.

(3) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether an applicant for employment has a conviction, or an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. The Department of Justice shall provide written notification to the private school employer only as to whether an applicant for employment has any convictions, or arrests pending final adjudication, for any of these crimes.

(d) An employer shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section.

(e)(1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(g) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(j) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(k) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(l) The Department of Justice may charge a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

**44237 (cont.)**

(m) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(n) All information obtained from the Department of Justice is confidential. Agencies handling Department of Justice information shall ensure the following:

(1) No recipient shall disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

**COMMITTEE OF CREDENTIALS**

<b>44240</b>	<b>Appointment and composition of committee of credentials: terms</b>
<b>44241</b>	<b>Function of committee; applicable sections</b>
<b>44242</b>	<b>Supervision of committee by commission</b>
<b>44242.5</b>	<b>Presentation of allegations that may be grounds for denial, suspension or revocation of credential; jurisdiction of committee; investigation; probable cause determination; report of findings</b>
<b>44242.7</b>	<b>Time for presentation of allegation; adoption of regulations specifying recurring conduct</b>

- 44243**      **Assignment of administrative duties**
- 44244**      **Allegations of misconduct; procedures**
- 44244.1**    **Adoption of committee's recommendations by commission; notice; request for administrative hearing; private admonition proceedings**
- 44245**      **Suspension or revocation; closed hearing**
- 44246**      **Compliance with Government Code**
- 44247**      **Reevaluation of application**
- 44248**      **Unauthorized release of information**

## **44240**

The commission shall appoint a Committee of Credentials, consisting of seven persons for terms fixed by the commission but not to exceed two years.

The committee shall include:

- (a) One member who shall be a full-time certified classroom teacher in the public elementary schools with not less than five years' classroom experience.
- (b) One member who shall be a full-time certified classroom teacher in the public secondary schools with not less than five years' classroom experience.
- (c) One member who shall be a certified administrative employee in the public schools.
- (d) One member who shall be a member of the governing board of any school district. No person who is or has been employed in a certificated position in the public schools within the preceding five years shall be appointed as a school board member.
- (e) Three members who shall be representatives of the public. No person who is or has been employed in a certificated position in the public schools or who is or has been a member of any governing board of a school district or county board of education

## **APPOINTMENT AND COMPOSITION OF COMMITTEE OF CREDENTIALS; TERMS**

## 44240 (cont.)

within the five years next preceding date of appointment shall be appointed as a public member.

The additional public members of the committee provided for in this section as amended during the 1977-78 Regular Session, shall be appointed by the commission as vacancies in the committee occur, consistent with the requirements of professional representation. Appointments to the Committee of Credentials shall reflect, to the extent feasible, the ethnic and cultural diversity of California public schools.

### **FUNCTIONING OF COMMITTEE: APPLICABLE SECTIONS**

## **44241**

Sections 44215, 44216, 44217, 44218, 44220, and 44221 are applicable to the Committee of Credentials.

### **SUPERVISION OF COMMITTEE BY COMMISSION**

## **44242**

The Committee of Credentials shall be under the direct supervision of the commission.

### **PRESENTATION OF ALLEGATIONS THAT MAY BE GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF CREDENTIAL; JURISDICTION OF COMMITTEE; INVESTIGATION; PROBABLE CAUSE DETERMINATION; REPORT OF FINDINGS**

## **44242.5**

(a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an initial review upon receipt of any of the following:

(1)(A) Official records of the Department of Justice, of any law enforcement agency, of any state or federal court, and of any other agency of this state or another state.

(B) For purposes of paragraph (A), "agency of this state" has the same meaning as that of "state agency" as set forth in Section 11000 of the Government Code.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3)(A) A statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

(B) The employer shall provide the notice described in subparagraph (A) to the commission not later than 30 days after the dismissal, nonreelection, suspension, placement on unpaid administrative leave, resignation, or departure from employment of the employee.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(5) A notice from a school district, employer, public agency, or testing administrator of a violation of Section 44420, 44421.1, 44421.5, or 44439.

(6)(A) An affirmative response on any application submitted to the commission as to any conviction, adverse action on, or denial of, any license, or pending investigation into any criminal allegation or pending investigation of any noncriminal allegation of misconduct by a governmental licensing entity.

(B) Failure to disclose any matter set forth in subparagraph (A).

(c) An initial review commences on the date that the written notice is mailed to the applicant or credential holder that his or her fitness to hold a credential is under review. Upon commencement of a formal review pursuant to Section 44244, the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or that he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

## **44242.5 (cont.)**

(3) Determination of probable cause for an adverse action on the credential. If the allegation is for unprofessional or immoral conduct, the committee shall, in any formal review conducted pursuant to Section 44244 to determine probable cause, permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

(A) If the committee determines that probable cause for an adverse action does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for an adverse action on the credential exists, upon receipt of a request from an applicant or a credential holder pursuant to Section 44244.1, the commission shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a formal review pursuant to Section 44244 upon receipt of any of the following:

(1)(A) Official records of any state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to any criminal offense or official records of any state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

(B) Nothing in paragraph (A) shall be construed to relieve the commission from the confidentiality provisions, notice, and due process requirements set forth in Section 827 of the Welfare and Institutions Code.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of any governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(5) A notice described in paragraph (5) of subdivision (b).

(6) A response or failure to disclose, as described in paragraph (6) of subdivision (b).

(e)(1) Upon completion of its investigation, the committee shall report its actions and recommendations to the commission, including its findings as to probable cause, and if probable cause exists, its recommendations as to the appropriate adverse action.

(2) The findings shall be available, upon its request, to the employing or last known employment school district, or, where adverse action is recommended by the committee and a request is made within one year from the date the committee makes a recommendation, to a school district providing verification that the credential holder has applied for employment in the district. The findings shall, for all purposes, remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who otherwise releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

(f)(1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission may, in accordance with Section 44341, make inquiries and requests for production of information and records only from the Department of Justice, any law enforcement agency, any state or federal court, and any licensing agency of this state or any licensing agency of another state.

(2) For purposes of determining whether jurisdiction exists, paragraph (1) does not apply to release of personnel records.

## **44242.7**

(a) Any allegation of an act or omission by the holder of a credential, except for an allegation that involves sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct, shall be presented to the Committee of Credentials for initial review within four years from the date of the alleged act

**TIME FOR  
PRESENTATION  
OF  
ALLEGATION;  
ADOPTION OF  
REGULATIONS  
SPECIFYING  
RECURRING  
CONDUCT**

## **44242.7 (cont.)**

or omission, or within one year from the date the act or omission should reasonably have been discovered.

(b) The commission shall adopt regulations specifying conduct that is considered recurring conduct that results in a pattern of misconduct as set forth in subdivision (a).

### **ASSIGNMENT OF ADMINISTRATIVE DUTIES**

## **44243**

(a) The commission may assign to the Committee of Credentials administrative duties as it may see fit relating to adverse actions concerning applicants and credential holders.

(b) The commission shall supervise the work of the committee and shall provide statements of policy relative to committee operation and procedures as it deems appropriate to do so.

### **ALLEGATIONS OF MISCONDUCT; PROCEDURES**

## **44244**

(a) At least 30 days prior to any formal review of the Committee of Credentials at which the application of an applicant or credential of a holder is to be considered, the committee shall notify the applicant or holder of the specific allegations of misconduct that make the application or credential subject to adverse action. The notification shall be in ordinary and concise language and set forth the acts or omissions charged and the statutes or rules violated. Supplemental allegations of misconduct shall be sent to the holder or applicant at least 30 days prior to the formal review. The portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection and copying by the holder or applicant and his or her attorney. The statement of the allegations shall inform the applicant or holder that the allegations, if true, are sufficient to cause his or her application or credential to be subject to adverse action.

(b)(1) The formal review shall be held no later than six months after the commencement of the initial review as set forth in subdivision (c) of Section 44242.5. The formal review shall determine either that no adverse action shall be taken or that the allegations are sufficient to cause his or her application or credential to be subject to adverse action.

(2) All testimony before the committee shall be verified under penalty of perjury by oath or affirmation. The chairperson of the committee may administer the oath or affirmation. The chairperson may designate staff to administer the oath or

affirmation for statements taken during the investigation of allegations of misconduct.

(c) Notwithstanding subdivision (b), the chairperson of the commission may grant the committee an extension of time, not exceeding six months, when the committee demonstrates that additional time is necessary to complete its investigation or determination, as described in subdivision (b).

(d) The recommendation of the committee shall be in writing and a copy of the recommendation shall be delivered to the credential holder or applicant personally or sent to him or her by registered mail within 14 days after the formal review, together with specific information relative to any appeal rights to which the credential holder or applicant is entitled.

## **44244.1**

(a)(1) A recommendation by the Committee of Credentials to take an adverse action may be adopted by the commission without further proceedings if, after service of notice of the committee recommendation pursuant to Section 44244, the credential holder or applicant fails to give notice of intent to request an administrative hearing or if he or she gives notice of intent not to request an administrative hearing within 30 days.

(2) For good cause shown, the commission may grant an additional 30 days for filing of a request for an administrative hearing.

(b) The commission shall make no disclosures concerning private admonitions except as required by Section 44438.

## **44245**

(a) Notwithstanding any other provisions of law, all hearings and deliberations of the commission and Committee of Credentials to consider an adverse action or a reinstatement or reduction in penalty shall be closed sessions with only commission members, committee members, staff members, the credential holder or applicant whose application or credential is in issue, the counsel of the credential holder or applicant, and any material witnesses in attendance.

(b) All final actions taken pursuant to subdivision (a) shall be made public.

**ADOPTION OF  
COMMITTEE'S  
RECOMMENDATIONS  
BY COMMISSION;  
NOTICE; REQUEST  
FOR  
ADMINISTRATIVE  
HEARING; PRIVATE  
ADMONITION  
PROCEEDINGS**

**SUSPENSION  
OR  
REVOCATION;  
CLOSED  
HEARING**

## 44245 (cont.)

(c) Notwithstanding subdivision (b), disclosure of private admonitions shall be in accordance with Section 44438.

## COMPLIANCE WITH GOVERNMENT CODE

### 44246

When a hearing is held to deny, suspend, or revoke a credential, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commission shall have all the powers granted therein.

## REEVALUATION OF APPLICATION

### 44247

Any applicant for the renewal certification document who is denied a renewal by the Committee of Credentials may request a reevaluation of his application by the commission.

## UNAUTHORIZED RELEASE OF INFORMATION

### 44248

(a) Any member of the commission, commission staff member, member or staff member of the Committee of Credentials, State Department of Education employee who releases or gives out information received at a commission or committee meeting or hearing or through the investigation of a certified employee without authorization of the commission or committee, is guilty of a misdemeanor.

(b) Any material witness or his or her representative who releases or gives out information received at a commission or committee meeting or hearing, or who releases or gives out information obtained as a result of direct involvement in the investigation of a certified employee, without authorization of the commission or committee, is guilty of a misdemeanor unless this information was known to the material witness or his or her representative prior to that meeting, hearing, or investigation.

# CERTIFICATES AND CREDENTIALS

- 44320 Professional preparation programs; student teaching, collaborative effort with post secondary institutions.**
- 44332 Temporary certificates**
- 44332.5 Registration of certificates by certain districts; temporary certificate of clearance**

- 44332.6 Criminal record summary; applicants for temporary certificate or temporary certificate of clearance convicted of violent or serious felony; certificate of rehabilitation and pardon**
- 44334 Oath or affirmation**
- 44336 Health hazards**
- 44337 Teachers with disabilities; training; hiring**
- 44338 Teachers with disabilities; health and safety of others**
- 44339 Identification and evidence of good moral character; disclosures not required; notice**
- 44340 Identification cards**
- 44341 Production of information; confidentiality; consent**
- 44345 Denial of application**
- 44346 Further grounds for denial; classes of applicants; rehabilitation**
- 44346.1 Credentials, applicants convicted of violent or serious felony; certificate of rehabilitation and pardon**
- 44354 Administration of oath**
- 44355 Validity until revoked, suspended or expired; credentials void ab initio; grounds**

## **44320**

(d) Prior to admission to either student teaching under any professional preparation program approved by the commission, or participation in a field experience program as described in Section 44324, a candidate for a credential shall obtain a certificate of clearance from the commission which shall be issued when the commission has verified the candidate's personal identification and health status. The fee for the certificate of clearance shall not exceed one-half of the regular fee for a credential and shall be deducted from the fee for the initial credential applied for by the certificate holder.

**PROFESSIONAL  
PREPARATION  
PROGRAMS;  
STUDENT  
TEACHING;  
COLLABORATIVE  
EFFORT WITH  
POST  
SECONDARY  
INSTITUTIONS  
(Subsections (a)  
through (c)  
omitted for  
brevity)**

**TEMPORARY  
CERTIFICATES**

**44332**

(a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

**REGISTRATION OF  
CERTIFICATES BY  
CERTAIN DISTRICTS;  
TEMPORARY  
CERTIFICATE OF  
CLEARANCE**

**44332.5**

(a) A school district which may issue warrants pursuant to Section 42647 may, at its discretion, provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the school district.

(b) During any period when summary criminal history information is not available from the Federal Bureau of Investigation, no applicant for an initial credential, certificate, or permit shall be employed in a position requiring certification qualifications until he or she has met the minimum requirements for a temporary certificate of clearance. A temporary certificate of clearance or a credential, certificate, or permit authorizing service in the public schools shall be issued when the applicant has:

(1) Made full disclosure of all facts necessary to establish his or her true identity.

(2) Made a statement under penalty of perjury that he or she has not been convicted of a crime which would constitute grounds for the denial of the credential, permit, or certificate applied for.

An applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or to perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(3) Paid to the Commission on Teacher Credentialing the amount of twelve dollars (\$12) or the fees or costs which have been or will be assessed by the Federal Bureau of Investigation for the issuance of its summary criminal history of the applicant when this information is once again made available to the commission. The fees authorized by this paragraph shall be applicable to all credentials, permits, and certificates which were applied for or issued after October 1, 1981.

(c) Upon receipt of a statement from the Federal Bureau of Investigation that it has no summary criminal history information on the applicant, or upon receipt of the summary criminal history information and clearance by the Committee of Credentials, a temporary certificate of clearance shall be converted to a regular certificate of clearance.

**CRIMINAL  
RECORD SUMMARY;  
APPLICANTS FOR  
TEMPORARY  
CERTIFICATE OR  
TEMPORARY  
CERTIFICATE OF  
CLEARANCE  
CONVICTED OF  
VIOLENT OR  
SERIOUS FELONY;  
CERTIFICATE OF  
REHABILITATION  
AND PARDON**

**44332.6**

(a)(1) Before issuing a temporary certificate pursuant to Section 44332, a county or city and county board of education shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate if the applicant has been convicted of a violent or serious felony.

(2) Before issuing a temporary certificate of clearance pursuant to Section 44332.5, a school district shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony.

(b) This section applies to any violent or serious offense which, if committed in this state would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that he or she has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(e) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that the person has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(f)(1) Notwithstanding paragraph (1) of subdivision (a), a county or city and county board of education may issue a temporary certificate to an employee currently and continuously employed by a school district within the county who is serving under a valid

credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

(2) Notwithstanding paragraph (2) of subdivision (a), a county or city and county board of education may issue a temporary certificate of clearance to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

## **44334**

Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation: "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the United States and the State of California." The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015.5 of the Code of Civil Procedure, and shall be filed with the commission. Any certificated person who is a citizen or subject of any country other than the United States, and who is employed in any capacity in any of the public schools of the state shall, before entering upon the discharge of his duties, subscribe to an oath to support the institutions and policies of the United States during the period of his sojourn within the state. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

## **OATH OR AFFIRMATION**

## **44336**

When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

## **HEALTH HAZARDS**

## **44337**

No person otherwise qualified shall be denied the right to receive credentials from the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the grounds he or she is an individual with a disability, nor shall any school district refuse to engage a teacher

## **TEACHERS WITH DISABILITIES; TRAINING; HIRING**

## 44337 (cont.)

### TEACHERS WITH DISABILITIES; HEALTH AND SAFETY OF OTHERS

### IDENTIFICATION AND EVIDENCE OF GOOD MORAL CHARACTER; DISCLOSURES NOT REQUIRED; NOTICE

on such grounds, provided, that the teacher, with reasonable accommodations, is able to carry out the duties of the position for which he or she applies to the school district. "Disability," as used in this section, means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

## 44338

No person otherwise qualified shall be denied the right to receive credentials issued by the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the ground he or she is a person with a disability; provided, that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.

## 44339

(a) The commission shall adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to submit reasonable evidence of identification and good moral character.

(b) The adopted rules and regulations shall specify that an applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(c) The adopted rules and regulations shall also prescribe the notice which shall be supplied to each applicant on the application form, which shall include the following information:

(1) The offenses which constitute grounds for the mandatory denial or revocation of a credential.

(2) The offenses for which the commission is authorized to deny or revoke a credential, depending upon the degree of rehabilitation or requalification demonstrated by the applicant.

(3) The standards under which the commission determines that it shall not investigate or pursue offenses which are not clearly related to an applicant's fitness or competence to teach or perform other certificated services.

**44340**

Each applicant for a credential, or for the renewal of a credential, shall submit with his application duplicate personal identification cards provided by the commission upon which shall appear the legible fingerprints and a personal description of the applicant.

The commission is authorized to, and shall adopt such regulations as may in its judgment be necessary for the administration of this section.

**44341**

(a)(1) For the purpose of ascertaining the moral character and true identity of the holder of a credential or an applicant for a credential or the renewal of a credential after jurisdiction to commence an initial review pursuant to subdivision (b) of Section 44242.5 has been established, the commission is authorized to require the production of information, records, reports, and other data from any public agency. For the purposes of determining whether jurisdiction exists, the commission is also authorized to require the limited production of records as set forth in subdivision (f) of Section 44242.5.

(2) This information shall be provided to the commission within 30 days of the request.

(3) The commission shall maintain the confidentiality of this information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(b) Except for the situation prescribed in subdivision (d), every applicant for a credential or for the renewal of a credential shall be deemed to have given his or her consent for the securing of, and disclosure of, information to the commission for the sole purpose of ascertaining the moral character and true identity of the holder of a credential, the applicant for a credential, or a credential holder applying for the renewal of the credential.

(c) The Department of Justice shall furnish, upon application of the commission or its authorized representative, all information pertaining to any applicant of whom there is a record in its office except that information which may compromise or prejudice an ongoing criminal investigative matter may be withheld until the matter is completed.

(d) With the written consent of an applicant for a credential or a credential holder, the commission upon written request of any

**IDENTIFICATION  
CARDS****PRODUCTION  
OF  
INFORMATION;  
CONFIDENTIALITY;  
CONSENT**

## 44341 (cont.)

private school authority, shall release to that private school authority information and other data relative to the identification or fitness of any applicant for a teaching position in the private school so long as not otherwise prohibited by any other provision of law.

(e) Each application for a credential shall contain notice that the information provided by the applicant is subject to investigation for, and verification of, the applicant's moral character and true identity by means of review of information, records, reports, and other data from any agency or department of the state or any political subdivision of the state, whether chartered by the state or not, secured by the commission for these purposes.

## DENIAL OF APPLICATION

### 44345

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

- (a) Lacks the qualifications which are prescribed by law or regulations adopted by the commission pursuant thereto.
- (b) Is physically or mentally so disabled as to be rendered unfit to perform the duties authorized by the credential for which he or she applies. However, the mere fact that an applicant has sought or received psychiatric treatment shall not be considered as preliminary evidence of mental disability and shall not provoke special scrutiny of such applicant's qualifications for a credential.
- (c) Is addicted to the use of intoxicating beverages to excess.
- (d) Is addicted to the use of controlled substances.
- (e) Has committed any act involving moral turpitude.
- (f) Has had a certification document revoked.
- (g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.
- (h) Fails or refuses to furnish reasonable evidence of identification or good moral character.
- (i) Has been convicted of any offense defined in subdivision 1 of Section 314 of the Penal Code prior to September 7, 1955.

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

## **44346**

(a) The commission shall deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who comes within any of the following classes:

(1) Has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state.

(2) Has been convicted of any sex offense, as defined in Section 44010.

(3) Has been convicted of a controlled substance offense, as defined in Section 44011.

(4) Has been found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

(b) Notwithstanding paragraphs (2) and (3) of subdivision (a), no person shall be denied a credential solely on the basis that he or she has been convicted of a crime specified in paragraphs (2) and (3) of subdivision (a) if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(c) Notwithstanding paragraph (3) of subdivision (a) or subdivision (b), the commission may issue a credential to a person convicted of a controlled substance offense as defined in Section 44011 if the commission determines from the evidence presented that the person has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 or Part 3 of the Penal Code, or if the accusation or information against the person has been dismissed and he or she

## **FURTHER GROUNDS FOR DENIAL; CLASSES OF APPLICANTS; REHABILITATION**

## 44346 (cont.)

### **CREDENTIALS; APPLICANTS CONVICTED OF VIOLENT OR SERIOUS FELONY; CERTIFICATE OF REHABILITATION AND PARDON**

has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code.

(d) Notwithstanding paragraph (4) of subdivision (a), the commission may issue a credential to a person found to be insane through a criminal proceeding by a federal court or a court in this or any other state if the commission determines from the evidence presented that the person has been rehabilitated for at least five years.

### **44346.1**

(a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), the commission may, but is not required to, grant a credential to an applicant who has been convicted of a violent or serious felony if the person is eligible for, and has obtained, a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

### **ADMINISTRATION OF OATH**

### **44354**

Any oath required of an applicant for a credential may be administered by any of the persons enumerated in Section 60, by such employees of the Department of Education as the Superintendent of Public Instruction may designate, and by such employee of the commission as the commission may designate.

### **VALIDITY UNTIL REVOKED, SUSPENDED OR EXPIRED; CREDENTIALS VOID AB INITIO; GROUNDS**

### **44355**

(a) Except as provided in subdivision (b), all credentials regularly issued are valid until revoked, suspended, or expired as provided by law.

(b) A credential issued under either of the following circumstances is void and shall be deemed to be void from the date it was issued:

(1) A credential which would not have been issued but for a material deception or fraud committed by an applicant or by another in the applicant's behalf; or

(2) A credential which the commission had no lawful authority to issue and which would not have been issued but for some material mistake of law or fact by either or both the applicant and the commission.

(c) A notice that a credential is void pursuant to paragraph (1) or (2) of subdivision (b) shall be served upon the credential holder at his or her last known address as provided in Section 1013 of the Code of Civil Procedure. Within 30 days thereafter, such notice may be appealed to the commission only on the grounds that there was no fraud, material deception, or error and that the commission had the lawful authority to issue the credential on the facts stated in the application.

## PENALTIES FOR THE SUBMISSION OF FRAUDULENT DOCUMENTS

- 44360**      **Prohibited acts; violation**
- 44361**      **Filing license, credential, or  
certificate issued to another person;  
misdemeanor; punishment**
- 44362**      **Verification of facts necessary to  
establish qualifications; oath**

### **44360**

Any person is guilty of a misdemeanor who, individually or in a representative or any other capacity, does any of the following:

(a) Alters with fraudulent intent, or uses or attempts to use any altered diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a credential or certificate authorizing service in the public schools.

(b) Assumes any degree or title not conferred upon him or her in the manner and by the authority recognized in this chapter with intent to represent falsely that he or she has received that degree or title, or who willfully makes any false statement on any

### **PROHIBITED ACTS; VIOLATION**

## 44360 (cont.)

application for examination, license, credential, or certificate under this chapter.

(c) Sells, barter, or offers to sell or barter, or purchase or procure directly or indirectly with the intent that it be fraudulently used, any license, credential, or permit authorizing service in the public schools, or any diploma, certificate, affidavit, transcript, or any other evidence required for use in connection with any application for, or the granting of any license, credential, or certificate authorizing service in, the public schools.

(d) Performs or attempts to perform any teaching or other certified service in any public school under a false or assumed name, or under any name other than that inscribed by the commission on any license, credential, or certificate authorizing him or her to perform those services. This provision shall not apply to persons who, because of marriage or other good faith reasons, have given notice of a name change.

(e) Refuses or willfully fails to surrender upon demand of the commission, his or her license, credential, or certificate authorizing teaching or service in the public schools upon revocation, suspension, or voiding of those documents under this chapter.

### **FILING LICENSE, CREDENTIAL, OR CERTIFICATE ISSUED TO ANOTHER PERSON; MISDEMEANOR; PUNISHMENT**

## 44361

Every person filing for record or attempting to file for record the license, credential, or certificate issued to another person, falsely claiming himself or herself to be the person named in or entitled to the license, credential, or certificate, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for not more than one year.

### **VERIFICATION OF FACTS NECESSARY TO ESTABLISH QUALIFICATIONS; OATH**

## 44362

Every fact necessary to establish the qualifications of an applicant for the issuance of any license, credential, or certificate authorizing the performance of services in the public schools shall be verified under penalty of perjury. An oath to this effect shall be displayed prominently on each application form, and shall be dated and subscribed by the applicant.

# REVOCATION AND SUSPENSION OF CERTIFICATION DOCUMENTS

<b>44420</b>	<b>Failure to fulfill contract as ground for suspension of diplomas and certificates</b>
<b>44421</b>	<b>General grounds for private admonishment, public reproof, credential revocation or credential suspension by commission</b>
<b>44421.1</b>	<b>Recruit of pupils as customers for certificated person's business; private admonishment or credential suspension or revocation</b>
<b>44421.5</b>	<b>False fiscal expenditure data reports; sanctions</b>
<b>44422</b>	<b>Immoral or unprofessional conduct, unfitness, disobedience; hearing by county board of education; report and recommendation; private admonishment, suspension or revocation by commission</b>
<b>44423</b>	<b>Request for revocation as reason for revocation by commission</b>
<b>44424</b>	<b>Conviction of crime; plea of nolo contendere; denial or termination of employment</b>
<b>44425</b>	<b>Conviction of sex or narcotic offense as grounds for revocation by commission; plea of nolo contendere to sex offense</b>
<b>44425.5</b>	<b>Criminal insanity; final revocation for felony sex or controlled substance offenses or murder</b>
<b>44426</b>	<b>Determination as sexual psychopath as grounds for revocation by commission</b>
<b>44427</b>	<b>Immoral or unprofessional conduct, unfitness, disobedience as grounds for revocation or suspension by county board of education</b>
<b>44433</b>	<b>Unauthorized departure from service as unprofessional conduct and ground for suspension by county board</b>

- 44434** Immoral and unprofessional conduct, profanity, intemperance, unfitness as grounds for recommendation for revocation
- 44435** Conviction of certain felonies as grounds for revocation by county board of education
- 44436** Conviction of sex offense or controlled substance offense as grounds for revocation and suspension by county board
- 44437** Determination as sexual psychopath as ground for revocation and suspension by county board
- 44438** Private admonition, expungement of records
- 44439** Subversion of licensing examination or administration of examination
- 44440** Withdrawal of application for credential, permit or other certification without consent of commission; authority of commission to proceed

**FAILURE TO FULFILL  
CONTRACT AS  
GROUND FOR  
SUSPENSION OF  
DIPLOMAS AND  
CERTIFICATES**

**44420**

(a) If any person employed by a school district in a position requiring certification qualifications refuses, without good cause, to fulfill a valid contract of employment with the district or leave the service of the district without the consent of the superintendent, if any, or the governing board, of the district except in the manner provided for by law, the commission may, after proof of this fact is made to it, take an adverse action on the credential holder but may not suspend the credential for more than one year or revoke the credential.

(b) If the credentials issued to the person by the commission have been subject to adverse action pursuant to subdivision (a), the commission may, if the credentials again become subject to suspension under this section, suspend the credentials for not more than two years.

(c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

## **44421**

The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

### **44421.1**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the credential holder or in which the credential holder is an employee.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

### **44421.5**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

## **44422**

Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing is charged with immoral or unprofessional conduct or evident unfitness for service or persistent defiance of, and refusal to obey, the laws regulating the duties of his position, the commission in its discretion after notifying the person charged of its intention to do so, may require the county board of education of the county in which he is serving or has last served to give notice of, and conduct, a hearing of the charges in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by a county board of education.

**GENERAL  
GROUNDS FOR  
PRIVATE  
ADMONISHMENT,  
PUBLIC REPROVAL,  
CREDENTIAL  
REVOCATION OR  
SUSPENSION BY  
COMMISSION**

**RECRUIT PUPILS  
AS CUSTOMERS  
FOR  
CERTIFICATED  
PERSON'S  
BUSINESS;  
PRIVATE  
ADMONISHMENT  
OR CREDENTIAL  
SUSPENSION OR  
REVOCATION**

**FALSE FISCAL  
EXPENDITURE  
DATA REPORTS;  
SANCTIONS**

**IMMORAL OR  
UNPROFESSIONAL  
CONDUCT,  
UNFITNESS,  
DISOBEDIENCE;  
HEARING BY  
COUNTY BOARD  
OF EDUCATION;  
REPORT AND  
RECOMMENDATION;  
PRIVATE  
ADMONISHMENT,  
SUSPENSION OR  
REVOCATION BY  
COMMISSION**

**44422 (cont.)**

The county board of education, after the hearing, shall report to the commission its findings, and a summary of the evidence, and shall make a definite recommendation concerning the revocation or suspension of the credential.

Upon receipt of a copy of the findings, summary of evidence, and recommendation, the commission may privately admonish the holder of the credential, or suspend or revoke the credential for the causes stated or order the charges dismissed.

**REQUEST FOR  
REVOCATION AS  
REASON FOR  
REVOCATION BY  
COMMISSION****44423**

(a) Whenever the holder of any credential issued by the commission requests in writing that the credential held by him or her be revoked, the commission shall revoke the credential.

(b) Notwithstanding a revocation pursuant to subdivision (a), the commission shall retain its authority to act under subdivision (b) of Section 44440.

**CONVICTION OF  
CRIME; PLEA OF  
NOLO CONTENDERE;  
DENIAL OR  
TERMINATION OF  
EMPLOYMENT****44424**

(a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or of any one or more of Penal Code Sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 217.1, both inclusive, 220, 222, 244, 245, 261 to 267, both inclusive, 273a, 273ab, 273d, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to felony convictions, 503 and 504, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code, or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the offenses specified in this section, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo contendere as a misdemeanor to one or more of the crimes set forth in subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been

affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with section 4852.01) of Title 6 of Part 3 of the Penal Code.

## **44425**

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the commission shall forthwith suspend the credential. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission shall forthwith terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall forthwith revoke the credential. Notwithstanding any other law, revocation shall be final without possibility of reinstatement of the credential if the conviction is for a felony sex offense, as defined in Section 44010, or a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor.

Upon a plea of nolo to any sex offense specified in Section 44010, which plea does not constitute a conviction pursuant to Section 1016 of the Penal Code, all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

**CONVICTION  
OF SEX OR  
NARCOTIC  
OFFENSE AS  
GROUNDS FOR  
REVOCATION BY  
COMMISSION;  
PLEA OF NOLO  
CONTENDERE  
TO SEX OFFENSE**

**CRIMINAL INSANITY;  
FINAL REVOCATION  
FOR FELONY SEX OR  
CONTROLLED  
SUBSTANCE  
OFFENSES OR  
MURDER**

**44425.5**

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing is found to be insane, by a federal court or a court in this or any other state, the commission shall immediately revoke all credentials held by the person.

Notwithstanding any other provision of law, revocation shall be final without possibility of reinstatement of the credentials if the holder of the credential is charged with a felony sex offense, as defined in Section 44010, a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor, or murder, as defined in Section 187 of the Penal Code, and, in response to the charge, the holder of the credential is found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

**DETERMINATION AS  
SEXUAL PSYCHOPATH  
AS GROUNDS FOR  
REVOCATION BY  
COMMISSION**

**44426**

Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the commission shall forthwith suspend the credential. If the determination is reversed and the holder is determined not be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the commission shall forthwith terminate the suspension of the credential. When the determination becomes final, the commission shall forthwith revoke the credential.

**IMMORAL OR  
UNPROFESSIONAL  
CONDUCT,  
UNFITNESS,  
DISOBEDIENCE AS  
GROUNDS FOR  
REVOCATION OR  
SUSPENSION BY  
COUNTY BOARD OF  
EDUCATION**

**44427**

County boards of education may revoke or suspend, for immoral or unprofessional conduct evident unfitness for teaching, or persistent defiance of, and refusal to obey the laws regulating the duties of, teachers, the certificates granted by them.

**44433**

If any teacher employed by a board of school trustees for a specified time, leaves the school before the expiration of the time, without the consent of the trustees, in writing, the teacher is guilty of unprofessional conduct, and the board of education of the county, upon receiving notice of the fact, may suspend the certificate of the teacher for the period of one year.

**UNAUTHORIZED  
DEPARTURE  
FROM SERVICE**

**44434**

Each city or city and county board of examination may for immoral and unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, recommend to the city or city and county board of education, the revocation of any certificate previously granted by the board of education in the city or city and county.

**IMMORAL AND  
UNPROFESSIONAL  
CONDUCT,  
PROFANITY,  
INTEMPERANCE,  
UNFITNESS AS  
GROUNDS FOR  
RECOMMENDATION  
FOR REVOCATION**

**44435**

Upon the becoming final of the conviction of the holder of a certificate issued by a county board of education of a violation or attempted violation of any one or more of Penal Code sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194, to 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to grand theft, 503 and 504, or of Penal Code Section 272, the county board of education shall forthwith revoke the certificate.

**CONVICTION OF  
CERTAIN FELONIES  
AS GROUNDS FOR  
REVOCATION BY  
COUNTY BOARD  
OF EDUCATION**

**44436**

Whenever the holder of a certificate issued by a county board of education has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the county board of education shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the board shall forthwith terminate the suspension of the certificate. When the conviction becomes final or when imposition of sentence is suspended, the board shall forthwith revoke the certificate.

**CONVICTION OF  
SEX OFFENSE  
OR CONTROLLED  
SUBSTANCE  
OFFENSE AS  
GROUNDS FOR  
REVOCATION  
AND  
SUSPENSION BY  
COUNTY BOARD**

**DETERMINATION AS  
SEXUAL PSYCHOPATH  
AS GROUND FOR  
REVOCATION AND  
SUSPENSION BY  
COUNTY BOARD**

**44437**

Whenever the holder of a certificate issued by a county board of education has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the county board of education shall forthwith suspend the certificate. If the determination is reversed and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the board shall forthwith terminate the suspension of the certificate. When the determination becomes final, the board shall forthwith revoke the certificate.

**PRIVATE ADMONITION;  
EXPUNGEMENT OF  
RECORDS**

**44438**

(a) "Private admonition," as used in this article and in Article 3 (commencing with Section 44240) of Chapter 2, is a warning, in writing, to the applicant or credential holder that states in ordinary and concise language the act or omission of the applicant or credential holder and further states that repetition of such act or omission may result in denial, suspension, or revocation of the credential.

(b) The private admonition shall be included in the applicant's or credential holder's file, maintained by the commission.

(c) The applicant's or credential holder's employer at the time of admonition shall receive a copy of the admonition and shall not make such copy accessible or disclose the contents thereof, unless the applicant or credential holder consents, in writing, thereto.

(d) For purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the private admonition is deemed a personnel record within the meaning of subdivision (c) of Section 6254 of the Government Code.

(e) The commission and the applicant's or credential holder's employer shall expunge all records pertaining to the private admonition maintained in his or her files pursuant to subdivisions (b) and (c) at the expiration of three years, so long as there is no recurrence of such an offense.

**44439**

The commission may take an adverse action on the ground that an applicant or credential holder has subverted or attempted to subvert any licensing examination or the administration of an examination, including, but not limited to:

- (a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials; the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; aiding by any means the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination or use or purport to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing applicants for examinations; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.
- (b) Conduct that violates the standard of examination administration; communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.
- (c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

**44440**

- (a) No applicant who is under review by the commission shall be allowed to withdraw his or her application for a credential without the written consent of the commission. The commission shall retain its authority over those applicants to proceed with the denial of the credential upon any ground provided by law, or to enter an order denying the credential upon any ground provided by law.

**SUBVERSION  
OF LICENSING  
EXAMINATION  
OR  
ADMINISTRATION  
OF  
EXAMINATION**

**WITHDRAWAL OF  
APPLICATION FOR  
CREDENTIAL  
WITHOUT CONSENT  
OF COMMISSION;  
AUTHORITY OF  
COMMISSION TO  
PROCEED**

## 44440 (cont.)

(b) The suspension or expiration of any credential, its surrender without the written consent of the commission, or a revocation pursuant to Section 44423 does not deprive the commission of its authority to do any of the following:

- (1) Institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law.
- (2) Enter an order suspending or revoking the credential.
- (3) Issue a public reproof or private admonition to the credential holder.

# RESIGNATIONS, DISMISSALS, AND TERMINATIONS OF EMPLOYEES

44830.1	Felons; certificated positions; criminal record summary; fingerprints; confidentiality
44830.2	Employment in multiple districts; fingerprints, criminal history record, etc.
44836	Employment of persons convicted of sex offenses or controlled substance offenses
44932	Grounds for dismissal of permanent employees; suspension of employees
44933	Other grounds for dismissal or suspension; additional application of section
44940	Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions
44940.5	Compulsory leave of absence; procedures; extension of leave; compensation; bond or security; reports
44942	Suspension or transfer of certificated employee on ground of mental illness; examination; mandatory sick leave

- 44947**      **Requirements upon governing  
board on dismissal for certain  
crimes**
- 51550**      **Sex education courses**

## **44830.1**

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c)(1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of

**FELONS;  
CERTIFICATED  
POSITIONS;  
CRIMINAL  
RECORD  
SUMMARY;  
FINGERPRINTS;  
CONFIDENTIALITY**

**44830.1 (cont.)**

implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 34.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures

unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(l) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

## **44830.1 (cont.)**

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

## **EMPLOYMENT IN MULTIPLE DISTRICTS; FINGERPRINTS, CRIMINAL HISTORY RECORDS, ETC.**

## **44830.2**

(a) For situations in which a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position requiring certification qualifications in multiple school districts within a county or within contiguous counties, the districts may agree among themselves to designate a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous counties, for the purposes of performing the following functions:

(1) Sending fingerprints to the Department of Justice.

(2) Receiving reports of convictions of serious and violent felonies.

(3) Reviewing criminal history records and reports of subsequent arrests from the Department of Justice.

(4) Maintaining common lists of persons eligible for employment.

(b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a), (d), and (g) of Section 44830.1.

(c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to

the participating districts and remove the affected employee from the common list of persons eligible for employment.

(d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice, to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.

(e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.

(f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

## **44830.2 (cont.)**

### **EMPLOYMENT OF PERSONS CONVICTED OF SEX OFFENSES OR CONTROLLED SUBSTANCE OFFENSES**

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

## **44836**

(a)(1) The governing board of a school district shall not employ or retain in employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in Section 44010.

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

(b)(1) The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011.

(2) If a person's conviction for a controlled substance offense as defined in Section 44011 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(c) Notwithstanding subdivision (b), the governing board of a school district may employ a person convicted of a controlled substance offense in a position requiring certification qualifications if that person holds an appropriate credential issued by the Commission on Teacher Credentialing.

### **GROUND FOR DISMISSAL OF PERMANENT EMPLOYEES; SUSPENSION OF EMPLOYEES**

## **44932**

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

(2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919<sup>1</sup>, or in any amendment thereof.

(3) Dishonesty.

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

(6) Physical or mental condition unfitting him or her to instruct or associate with children.

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

(8) Conviction of a felony or of any crime involving moral turpitude.

(9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(10) Knowing membership by the employee in the Communist Party.

(11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

**OTHER GROUNDS FOR  
DISMISSAL OR  
SUSPENSION;  
ADDITIONAL  
APPLICATION OF  
SECTION**

**44933**

A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils.

**LEAVE OF ABSENCE;  
CERTIFICATED  
EMPLOYEE  
CHARGED WITH  
MANDATORY OR  
OPTIONAL LEAVE  
OF ABSENCE  
OFFENSE;  
SUSPENSION OF  
CREDENTIALS;  
DEFINITIONS**

**44940**

(a) For purposes of this section, “charged with a mandatory leave of absence offense” is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

(b) For purposes of this section, “charged with an optional leave of absence offense” is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term “school district” includes county offices of education.

(d) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), the governing board of the school district shall immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. The employee’s teaching or service credential shall be automatically suspended for the same period of time.

(e) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in

subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section.

## **44940.5**

Any certificated employee placed on compulsory leave of absence pursuant to Section 44940 and any classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section 44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

(b) Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district.

## **COMPULSORY LEAVE OF ABSENCE; PROCEDURES; EXTENSION OF LEAVE; COMPENSATION; BOND OR SECURITY; REPORTS**

## 44940.5 (cont.)

### **SUSPENSION OR TRANSFER OF CERTIFICATED EMPLOYEE ON GROUND OF MENTAL ILLNESS; EXAMINATION; MANDATORY SICK LEAVE**

(d) Any action taken pursuant to this section by a governing board shall be reported immediately to the Commission for Teacher Preparation and Licensing. The commission shall give priority to the investigation and resolution of these cases.

## 44942

(a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(b) The governing board shall immediately, upon any suspension or transfer under this section, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, selected by him or her from a list of psychiatrists and psychologists to be provided by the board. To assist the panel in making its determination, the governing board shall supply to the panel, prior to the date scheduled for the examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue to receive his or her regular salary and all other benefits of employment during the period dating from his or her suspension to the filing of the report of the panel with the governing board.

(d) The examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered under this section. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist, psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his or her own choice, and any report of the psychiatrist, psychologist, or physician selected by him or her shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board no later than 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his or her duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave and hospital and medical benefits that he or she accrued during his or her employment by the governing board but only to the extent of such accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may, in writing, immediately demand a hearing. Upon receipt of that written demand, the governing board shall file a complaint in the superior court of the county in which the school district, or the major part thereof, is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and, if true, whether they constitute sufficient ground for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

(h) If the court finds that the employee was not, at the time of the suspension, incompetent to perform his or her assigned duties and should not have been placed on mandatory sick leave of absence, the employee shall be immediately reinstated to the same or a substantially similar position with full back salary, and any written record of the suspension or transfer or any report of the panel shall be destroyed.

## 44942 (cont.)

i) If the court confirms the placing of the employee on mandatory sick leave, or if the employee does not seek a hearing, then, upon written request of the employee made not earlier than six months nor later than two years after the date he or she was placed on mandatory sick leave of absence, a new panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, shall be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review, the employee shall be continued on the mandatory sick leave of absence, except that when the employee's total period of absence exceeds two years, the governing board shall either rescind its action and reinstate the employee to the same or a substantially similar position, or shall serve the employee with a notice of intention to dismiss him or her, and proceed according to Section 44943.

(j) If a majority of the new panel concludes in its report, or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be permitted to return to his or her duties, or if the court so concludes, the governing board shall take immediate action to restore the employee to the position from which he or she was suspended or transferred or to a substantially similar position.

(k) Every hearing and action by or before the governing board pursuant to this section shall be in executive session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing.

(l) Nothing in this section shall be construed to supersede Section 44949.

## REQUIREMENTS UPON GOVERNING BOARD ON DISMISSAL FOR CERTAIN CRIMES

### 44947

If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Commission on Teacher Credentialing and to the county board of education which issued the certificate under which the employee was serving at the time of his dismissal, a copy of the reporter's transcript of the hearing accompanied by a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

**51550**

The certification document of any person charged with the responsibility of making any instructional material available for inspection under this section or who is charged with the responsibility of notifying a parent or guardian of any class conducted within the purview of this section, and who knowingly and willfully fails to make such instructional material available for inspection or to notify such parent or guardian, may be revoked or suspended because of such act. The certification document of any person who knowingly and willfully requires a pupil to attend a class within the purview of this section when a request that the pupil not attend has been received from the parent or guardian may be revoked or suspended because of such act.

**SEX EDUCATION  
COURSES  
(Some  
provisions  
omitted for  
brevity)**

# CODE OF REGULATIONS

REGULATIONS

# COMMITTEE OF CREDENTIALS

## GENERAL PROVISIONS

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## DEFINITIONS

### **80300**

(a) “Adverse action” is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) “Aggravating factor” is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

(1) a prior record of adverse action including the nature and extent of that record;

(2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;

(3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;

(4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;

(5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or

(6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) “Applicant” is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) “Commission” is the Commission on Teacher Credentialing or a predecessor agency.

(e) “Committee” is the Committee of Credentials.

(f) “Confidential investigative report” is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

(g) “Credential” is any credential, certificate, life document, life diploma, permit or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

(h) “Complainant” is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

(i) “Denial” is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

(j) “Employer” is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

(k) “Formal review” is the meeting or hearing held pursuant to Education Code section 44244.

(l) “Holder” is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

## 80300 (cont.)

(m) “Mitigating factor” is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

(1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;

(2) lack of harm to the person who is the object of the misconduct;

(3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant’s or holder’s misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

(n) “Private admonition” is an adverse action defined and governed by Education Code section 44438.

- (o) “Probable cause” is reasonable grounds for belief in the existence of facts warranting adverse action.
- (p) “Public reproof” is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.
- (q) “Recurring conduct” is behavior involving the exercise of consistently poor judgment or misconduct.
- (r) “Revocation” is the termination of an individual’s ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.
- (s) “Sexual misconduct” is:
- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;
  - (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
  - (3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant.  
 “Pornography” consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.
- (t) “Suspension” is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

## **80300 (cont.)**

(1) A “stayed suspension” may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An “actual suspension” may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder’s rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

### **NOTICE TO APPLICANTS FOR ISSUANCE OR RENEWAL OF CREDENTIALS; APPLICATION FOR CHARACTER AND IDENTIFICATION CLEARANCE**

## **80301**

(a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential.

(b) Each applicant for initial issuance of a credential shall submit a completed Application for Character and Identification Clearance on a form adopted by the Commission on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant’s eligibility for a credential or Certificate of Clearance.

(c) The Application for Character and Identification Clearance shall include, but not be limited to, the following information for applicants:

(1) that the Commission is prohibited from issuing to or renewing the credential of any person convicted of any sex offense listed under Education Code Section 44010; or any narcotics offense listed under Education Code Section 44011; or who has been determined to be a mentally disordered sex offender; or that if a person holds a credential and has been convicted of any offense listed in Education Code Section 44424, such credential must be revoked.

**80302****STANDARDS  
FOR  
INVESTIGATION**

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned conduct;
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;
- (8) The publicity or notoriety given to the conduct.

(b) If the Committee finds no relationship between the alleged misconduct and the applicant's or holder's fitness, competence or ability to effectively perform the duties authorized by the credential the Committee shall close the investigation.

**REPORTS OF  
CHANGE IN  
EMPLOYMENT  
STATUS**

**80303**

(a) Whenever a credential holder, working in a position requiring a credential:

- (1) is dismissed;
- (2) resigns;
- (3) is suspended for more than 10 days;
- (4) retires; or

(5) is otherwise terminated by a decision not to employ or re-employ; as a result of an allegation of misconduct, the superintendent of the employing school district shall report the change in employment status to the Commission within 30 days.

(b) The report shall contain all known information about each alleged act of misconduct.

(c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. The report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement, or other failure to contest the truth of the allegations.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee shall investigate any superintendent who holds a credential who fails to file reports required by this section.

(e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, resigns, is suspended for more than ten days, retires or is otherwise terminated by a decision not to employ or re-employ as a result of an allegation of misconduct. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

**80304**

(a) A notice filed pursuant to Education Code section 44242.5(b)(4) alleging sexual misconduct shall contain all of the following information:

- (1) name of the holder alleged to have engaged in misconduct;
- (2) name, age and address of each victim of the alleged misconduct;
- (3) a summary of all information known to the employer regarding the alleged misconduct; and
- (4) a summary of the action, if any, taken at the district level by the employer in response to the complaint of sexual misconduct.

**NOTICE OF  
SEXUAL  
MISCONDUCT****80306**

(a) With the exceptions set forth in Education Code section 44242.7(a), an allegation of an act or omission by a credential holder shall be presented to the Committee within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered by the Commission.

(b) For purposes of Education Code section 44242.7(a), a matter is presented to the Committee when the credential holder or applicant is notified that the matter is set for initial review by the Committee.

**TIME FOR  
PRESENTATION  
OF  
ALLEGATIONS****80307**

(a) All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including writings which form the basis for the allegations, with the exception of privileged information, shall be subject to discovery by the applicant or holder following commencement of an investigation.

(b) The fee for providing discovery is \$.10 per page for photocopies, \$.50 per page for copies from microfilm, the actual cost of postage, and the actual cost of staff time at the hourly rate of a program technician.

**DISCOVERY**

## **80307 (cont.)**

(c) Credential holders or applicants being investigated shall be notified of the availability and cost of discovery upon notice of initial review from the Commission. Upon receipt of a written request for discovery, Commission staff shall, within five working days, notify the requester of the fee for discovery. This fee shall be paid prior to the release of the documents subject to discovery.

### **INVESTIGATION COMMENCES**

#### **80307.1**

An investigation is commenced on the date respondent is first notified, in writing, that his or her fitness to hold a credential is under initial review.

### **PRELIMINARY REVIEW**

#### **80308**

(a) If the Committee receives information about an applicant or holder, the Committee may conduct a preliminary review of the information prior to commencing an investigation. At the preliminary review, the Committee may either determine to end the review or instruct staff to set the matter for initial review at a later meeting.

(b) A credential holder's personnel records shall not be obtained without written notification to the holder.

(c) No contact shall be made by any Commission staff members with anyone except the complainant prior to opening the investigation.

**NOTE:** Pursuant to court order, the Commission has jurisdiction to conduct an investigation, including requests for information to public agencies, only upon receipt of relevant information as specified within and pursuant to Education Code section 44242.5. Unless the Commission receives such information as specified in section 44242.5, it may not proceed to investigate, including the undertaking of a preliminary review pursuant to section 80308.

#### **80309**

### **MEDICAL AND PSYCHIATRIC GUIDELINES**

(a) The Committee shall not initiate an administrative hearing solely on the grounds that an applicant or licensee is suffering from a contagious and communicable disease or other disease or defect of mind or body unless probable cause appears from the evidence that:

(1) The condition of the applicant or licensee constitutes a health hazard to students or persons with who he or she must

associate in carrying out the duties authorized by the credential applied for or held; or

(2) Because of the said disease or defect the applicant or licensee is unable to perform the duties authorized by the credential applied for or held.

(b) Any denial, suspension, or revocation of a credential pursuant to this section shall be limited in duration to the period of actual disability; and the credential shall be granted or reissued upon presentation of satisfactory evidence that such disability no longer exists.

(c) Where it appears from the evidence that an applicant or licensee is, or has been within one year, under psychiatric treatment as a condition of probation imposed by a court as a result of the commission of acts or omissions which also constitute probable cause for private admonition, denial, suspension, or revocation of a credential; or where the evidence shows that an applicant or licensee has committed acts or omissions which, but for the reasonably probable existence of some mental defect or disability, would constitute cause for disciplinary action, the Committee of Credentials may require and the applicant or licensee shall submit to an examination by a designated board certified licensed psychiatrist who shall prepare his expert opinion with respect to whether the applicant or licensee is able to perform the duties authorized by the credential applied for or held; and if not so able, the probable duration and severity of the disability. Such examination shall be at the expense of the Commission.

Refusal or willful failure of an applicant or licensee to submit to such examination within 30 days after service of such request by registered mail shall constitute cause for denial of the application for issuance or renewal of a credential, and any revocation or suspension of a credential shall not be limited by the provisions of subsection 2(b) above.

## **80309.1**

(a) Prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.

(b) Notification of the initial review shall be provided to the holder or applicant only.

## **INITIAL REVIEW**

## **80309.1 (cont.)**

(c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.

(d) Staff shall submit a confidential investigative report to the Committee.

### **NOTICE OF MEETING, FORMAL REVIEW**

## **80310**

(a) The notice of meeting required by Education Code section 44244(a), for the meeting also known as formal review, shall be sent to the holder or applicant by certified mail, return receipt requested. The notice shall be sent to the address of record and/or the last known address of the holder or applicant. The notice to the holder or applicant shall contain a confidential investigative report.

(b) The notice shall be sent to any complainant and known employer, or last known employer and to the university or college which submitted a pending application for certificate of clearance.

### **REQUEST FOR APPEARANCE**

## **80311**

(a) No later than 20 days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a specific day and time to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

**80312**

A matter set for review by the Committee may be continued only upon written request and in compelling and verifiable situations. As part of the written request for a continuance the respondent must submit a written waiver of time and a showing that there will be no harm to the public in the event the continuance is granted. A request for a continuance must be received at the Commission no later than 10 days prior to the date set for review by the Committee.

**CONTINUANCE****80313**

(a) Any person determined by the Committee of Credentials to be a material witness in a particular case shall be permitted to be present to provide testimony during formal review by the Committee and shall be examined for rebuttal evidence, if any.

**PRESENCE OF  
MATERIAL  
WITNESSES**

(b) Whether a witness is called shall be at the sole discretion of the Committee of Credentials.

(c) The order of witness testimony shall be determined by the Committee of Credentials.

(d) A minor witness (persons under 18 years of age) may have one support person present during their testimony. No support will be allowed for adult witnesses, except the representative designated by the applicant or holder under investigation.

**80314**

A quorum of the Committee must be present to consider any action, and at least four members must concur to take any action.

**ACTION****80314.5**

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by registered mail to the holder's or applicant's last known address within 14 days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings, unless otherwise provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

**NOTICE OF  
COMMITTEE  
ACTION**

## **RECONSIDERATION**

### **80315**

(a) A holder, applicant, complainant or employer may request, in writing, that the Committee reconsider its recommended decision. The request must be received by the Commission no later than 30 days after personal service or mailing notice of the Committee's recommendation. The request for reconsideration shall also contain new and different evidence which may materially affect the findings of the Committee.

(b) When a recommendation of the Committee is presented to the Commission pursuant to Education Code section 44244.1, the Commission may adopt the recommendation or request the Committee to reconsider its action, decision, or recommendation. Upon request of the Commission, the Committee shall reconsider its action, decision, or recommendation.

(c) A member of the Committee may participate in the reconsideration of a matter even though he or she was not present during the original consideration of the matter if the interested parties agree, or if the member reviews a transcript or tape recording of the proceedings and all other documents and evidentiary materials before the Committee.

## **CONFIDENTIAL REPORT OF INVESTIGATION**

### **80316.5**

Where the confidential investigative report shows that the allegations are groundless the file shall be sealed.

## **ADMINISTRATIVE HEARING**

### **80317**

The credential holder or applicant may, within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation, request an administrative hearing by giving written notice to the Commission. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

## **CONSENT DETERMINATIONS**

### **80320**

At any time after the Committee has determined that a Statement of Issues or an Accusation shall be filed against a respondent, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession.

## **CHAPTER 3 OF PART VIII OF TITLE 5**

### **CCR (effective February 3, 1989)**

#### **80331**

#### **RULES OF CONDUCT FOR PROFESSIONAL EDUCATORS**

- (a) These rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing, and the consequences of any willful breach may be revocation or suspension of the credential, or license, or private admonition of the holder.
- (b) Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of certificated persons or to the consequences of the violation of such duties and obligations. The prohibition of certain conduct in these rules is not to be interpreted as approval of conduct not specifically cited.
- (c) These rules may be cited and referred to as “Rules of Conduct for Professional Educators.”
- (d) The Commission shall complete a study of the effect of these rules and present its findings to the Governor, the Legislature, and the State Board of Education no later than September 1, 1989.
- (e) As used in these rules:
- (1) “Certificated person” means any person who holds a certificate, permit, credential, or other license authorizing the performance of teaching or education-related service in grades K through 12 in California public schools.
  - (2) “Professional employment” means the performance for compensation of teaching or other education-related employment in a position for which certification requirements are set by law.
  - (3) “Confidential information” means information which was provided to the certificated person solely for the purpose of facilitating his/her performance of professional services for or on behalf of the person or employer providing such information.

**PROFESSIONAL  
CANDOR AND HONESTY  
IN LETTERS OR  
MEMORANDA OF  
EMPLOYMENT  
RECOMMENDATION**

**80332**

(a) A certificated person shall not write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which misrepresents facts as a condition of resignation or for withdrawing action against the employing agency.

(b) This rule has no application to statements identified in the letter or memorandum as personal opinions of the writer but does apply to unqualified statements as fact which the writer does not know to be true or to statements as fact which the writer knows to be untrue.

**WITHDRAWAL  
FROM PROFESSIONAL  
EMPLOYMENT**

**80333**

(a) A certificated person shall not abandon professional employment without good cause.

(b) "Good cause" includes but is not necessarily limited to circumstances not caused by or under the voluntary control of the certificated person.

**UNAUTHORIZED  
PRIVATE GAIN OR  
ADVANTAGE**

**80334**

A certificated person shall not:

(a) Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;

(b) Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which is the property of his/her employer without the express or clearly implied permission of his/her employer;

(c) Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.

**80335**

A certificated person shall not, after July 1, 1989:

(a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g)(2) and (3).

(b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.

(c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.

(d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.

(e) Effective October 20, 1993, no adverse action described in Title 5, California Code of Regulations, section 80331(a) shall be imposed for violation of this provision prior to review and attempted disposition pursuant to Title 5, California Code of Regulations, section 80339 through 80339.6.

**80336**

(a) A certificated person shall not:

(1) Perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that his or her

**PERFORMANCE  
OF  
UNAUTHORIZED  
PROFESSIONAL  
SERVICES**

**PERFORMANCE  
WITH  
IMPAIRED  
FACULTIES**

## **80336 (cont.)**

mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(2) Assign or require or permit a subordinate certificated person to perform any duties authorized by his or her credential during any period in which the superior certificated person knows of his or her own knowledge or is in possession of facts showing that the subordinate certificated person's mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(b) For the purpose of this rule, substantial impairment means a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property. It does not include or mean inability attributable to lack of, or inadequate, professional preparation or education.

## **HARASSMENT AND RETALIATION PROHIBITED**

### **80337**

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

## **DISCRIMINATION PROHIBITED**

### **80338**

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

## **FILING OF MAILING ADDRESS**

### **80412**

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission of any change therein.

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, to the Commission at the office of the Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95814-4213.

## 80028

A Certificate of Clearance is a document, issued by the Commission, which verifies that the holder meets personal and health qualifications necessary to obtain a regular California teaching or services credential.

## CERTIFICATE OF CLEARANCE

(a) Each candidate for an initial credential shall, prior to admission to student teaching under any professional preparation program approved by the Commission, obtain a Certificate of Clearance in accordance with (1) or (2) below.

(1) No less than 60 working days prior to admission to student teaching, the candidate shall submit the following materials to the Commission:

(A) Completed application form.

(B) One-half of the credential issuance/reissuance or renewal fee specified in Section 80487(a)(1), unless otherwise established by law. The fee shall apply toward the initial credential if the Certificate of Clearance accompanies the credential application.

(C) Duplicate personal identification cards as specified in Section 80442 including appropriate fees specified in Section 80487(a)(6) and 80487(a)(7) or by law.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(2) At any time prior to admission to student teaching, the candidate shall submit the following materials to the dean/director of teacher education or the chief campus officer of the institution of higher education at which such admission is sought:

(A) All materials as specified in (A), (B) and (C) of subsection (a)(1) of this section.

(B) An affidavit attesting to the identification and personal and health qualifications of the candidate, completed and signed, under penalty of perjury, by the candidate.

## **80028 (cont.)**

The dean/director of teacher education or chief campus officer of the institution shall complete and sign, under penalty of perjury, an affidavit stating as follows: "I am the dean/director of teacher education or the chief campus officer at the above institution of higher education. I have personally examined the identification documents of this applicant and know that he/she is in fact the person he/she represents himself/herself to be. I have personally interviewed the candidate and explained to him/her the very serious consequences of any concealment or falsification of his/her identity or fitness. I hereby certify under penalty of perjury that the foregoing is true and correct."

The dean/director of teacher education or chief campus officer of the institution shall forward all materials to the Commission and will retain copies of all materials submitted. Copies of these materials shall serve in lieu of actual issuance of the Certificate of Clearance and shall authorize admission to student teaching.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(b) Each potential candidate for an initial credential may, prior to admission to any professional preparation program approved by the Commission, obtain a Certificate of Clearance.

Application for the Certificate of Clearance shall be submitted to the Commission and shall include all materials specified in (A), (B), and (C) of subsection (a)(1) of this section.

The Certificate of Clearance shall be issued when the Commission has verified the potential candidate's personal and health status.

Except as provided in Subsection (a), institutions and local education agencies should not construe this as an authorization or direction to require this clearance of all students.

**PENAL CODE**

# PERJURY AND SUBORNATION OF PERJURY

**PERJURY  
DEFINED,  
EVIDENCE  
NECESSARY TO  
SUPPORT  
CONVICTION**

<b>118</b>	<b>Perjury defined; evidence necessary to support conviction</b>
<b>126</b>	<b>Punishment</b>

**118**

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

**PUNISHMENT**

**126**

Perjury is punishable by imprisonment in the state prison for two, three or four years.

# REPORTING OF ARRESTS FOR SEX OFFENSES

<b>290</b>	<b>Registration of sex offenders</b>
<b>290.1</b>	<b>Registration of sex offenders, exception</b>
<b>290.5</b>	<b>Pardon or certificate of rehabilitation; relief from duty to register</b>
<b>291</b>	<b>School employees; arrest for sex offense; notice to school authorities</b>

## REGISTRATION OF SEX OFFENDERS

### 290

(a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the

entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration. It is the intent of the Legislature that efforts be made with respect to persons who are subject to this subparagraph who are on probation or parole to engage them in treatment.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with

**290 (cont.)**

the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

**290 (cont.)**

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of

confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require

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the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

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(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

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(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14

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to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

- (A) The offender's full name.
- (B) The offender's known aliases.
- (C) The offender's gender.
- (D) The offender's race.
- (E) The offender's physical description.
- (F) The offender's photograph.
- (G) The offender's date of birth.
- (H) Crimes resulting in registration under this section.
- (I) The offender's address, which must be verified prior to publication.
- (J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
- (K) Type of victim targeted by the offender.
- (L) Relevant parole or probation conditions, such as one prohibiting contact with children.
- (M) Dates of crimes resulting in classification under this section.
- (N) Date of release from confinement.
- (O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

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(6) For purposes of this section, “likely to encounter” means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, “reasonably suspects” means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, “at risk” means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions

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Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information

regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith

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conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

### REGISTRATION OF SEX OFFENDERS, EXCEPTION

## 290.1

Notwithstanding Section 1203.4 and except as provided in Section 290.5, a person who is convicted of a sex offense for which registration is required under Section 290 shall not be relieved from the duty to register under that section.

### PARDON OR CERTIFICATE OF REHABILITATION; RELIEF FROM DUTY TO REGISTER

## 290.5

(a) A person required to register under Section 290 may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01)

of Title 6 of Part 3, and, except persons described in paragraph (1) of subdivision (a) of Section 290.4, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under Section 290 if not in custody, on parole, or on probation. This certificate shall not relieve persons described in paragraph (1) of subdivision (a) of Section 290.4 of the duty to register under Section 290 and shall not relieve a petitioner of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future.

(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (1) of subdivision (a) of Section 290.4 shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

## 291

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 or in subdivision 1 of Section 261, or Section 44010 of the Education Code of any school employee, shall do either of the following:

(a) If the school employee is a teacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein the person is employed. Upon receipt of the notice, the

**SCHOOL  
EMPLOYEES;  
ARREST FOR  
SEX OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

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county superintendent of schools shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

## **SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES**

<b>1000.3</b>	<b>Unsatisfactory performance by defendant, or engagement in criminal conduct</b>
<b>1000.4</b>	<b>Successful completion of program; record; disclosure of arrest</b>
<b>1000.5</b>	<b>Preguilty plea drug court program; operation of program; effect of defendant's performance</b>
<b>1001.5</b>	<b>Statement by defendant or information procured therefrom; admissibility</b>
<b>1001.9</b>	<b>Successful completion of program; record; disclosure of arrest</b>

### **UNSATISFACTORY PERFORMANCE BY DEFENDANT, OR ENGAGEMENT IN CRIMINAL CONDUCT**

#### **1000.3**

If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered.

If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charges shall be dismissed.

Prior to dismissing the charge or charges or rendering a finding of guilt and entering judgment, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met his or her financial obligation to the program, if any. As provided in Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.

## **1000.4**

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained

**SUCCESSFUL  
COMPLETION  
OF PROGRAM;  
RECORD;  
DISCLOSURE  
OF ARREST**

## 1000.4 (cont.)

### **PREGUILTY PLEA DRUG COURT PROGRAM; OPERATION OF PROGRAM; EFFECT OF DEFENDANT'S PERFORMANCE**

in any questionnaire or application for a position as a peace officer, as defined in Section 830.

## 1000.5

(a) The presiding judge of the superior or municipal court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

### **STATEMENT BY DEFENDANT OR INFORMATION PROCURED THEREFROM; ADMISSIBILITY**

## 1001.5

No statement, or information procured therefrom, made by the defendant in connection with the determination of his or her eligibility for diversion, and no statement, or information procured therefrom, made by the defendant, subsequent to the granting of diversion or while participating in such program, and no information contained in any report made with respect thereto, and no statement or other information concerning the defendant's participation in such program shall be admissible in any action or proceeding. However, if a divertee is recommended for

termination for cause, information regarding his or her participation in such program may be used for purposes of the termination proceedings.

## **1001.9**

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

**SUCCESSFUL  
COMPLETION  
OF PROGRAM;  
RECORD;  
DISCLOSURE  
OF ARREST**

## **PLEA**

## **1016(3)**

Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

**EFFECT OF  
PLEA OF  
NOLO  
CONTENDERE  
(Some material  
omitted for  
brevity)**

# JUDGMENT

**DISCHARGED PETITIONER;  
CHANGE OF PLEA OR  
VACATION OF VERDICT;  
DISMISSAL OF CHARGE**

## 1203.4

a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing.

However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(f) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

# RESTORATION OF RIGHTS

## PETITION FOR CERTIFICATE OF REHABILITATION AND PARDON

### 4852.01

(a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

(e) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

# CRIMINAL RECORDS, PROBATION

**11105.2**

**Subsequent  
arrest  
notification  
service**

**11105.3**

**Records of  
conviction  
involving sex  
crimes, drug  
crimes, or  
crimes of  
violence**

## **11105.2**

(a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, or certification duties upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, or certification. The notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent arrests for licensing, employment, or certification purposes.

(c) Any agency which submits the fingerprints of applicants for licensing, employment, or certification to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, or when the applicant may no longer renew or reinstate the license or certificate. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, or certifying authority.

## **SUBSEQUENT ARREST NOTIFICATION SERVICE**

## 11105.2 (cont.)

(d) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return the subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of the subsequent arrest notice.

(e) Any agency which submits the fingerprints of an applicant for employment, licensing, or certification to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing or certification.

(f) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

(g) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

## RECORDS OF CONVICTIONS INVOLVING SEX CRIMES, DRUG CRIMES, OR CRIMES OF VIOLENCE

## 11105.3

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (h) of a person who applies for a license, employment or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be

on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c)(1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (H), and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith conformity with this section is exempt from prosecution under Section 11142 or 11143 for the conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

**11105.3  
(cont.)**

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section “employer” means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, “human resource agency” means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 [commencing with Section 1500]), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 [commencing with Section 1569]), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 [commencing with Section 1596.70]) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(h) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period, or has been incarcerated as a result of any of those convictions within the preceding 10 years.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer’s request under subdivision (a) or any felony conviction that is over 10 years old if the subject of the request was incarcerated within 10 years of the employer’s request, for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 in the commission of that offense, Section 217.1, Chapter 8

(commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period or has been incarcerated for any of those convictions within the preceding 10 years.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose it was acquired.

## CHILD ABUSE AND NEGLECT REPORTING ACT

### 11166

(a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

**REPORT;  
DUTY; TIME  
(Some material  
omitted for  
brevity)**

**11166 (cont.)**

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that fine and punishment.

(c)(1) through (f) deleted for brevity.

(g)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedure shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, co-worker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 1165.9.

(h) through (l) deleted for brevity.

# HEALTH AND SAFETY CODE

# MARIJUANA

## 11357

Unauthorized possession; punishment; prior conviction; possession in school or on school grounds

## 11361

Adults employing or selling to minors; minors under or over 14 years of age; punishments

## 11361.5

Destruction of arrest and conviction records; applicable offenses; method; records not applicable; costs

## 11361.7

Accuracy, relevancy, timeliness and completeness of record subject to destruction; alteration of records; questions on prior criminal record; application of section

### UNAUTHORIZED POSSESSION; PUNISHMENT; PRIOR CONVICTION; POSSESSION IN SCHOOL OR ON SCHOOL GROUNDS

## 11357

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to

## 11357 (cont.)

appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

## **ADULTS EMPLOYING OR SELLING TO MINORS; MINORS UNDER OR OVER 14 YEARS OF AGE; PUNISHMENTS**

## 11361

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

## **11361.5**

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

**DESTRUCTION  
OF ARREST  
AND  
CONVICTION  
RECORDS;  
APPLICABLE  
OFFENSES;  
METHOD;  
RECORDS  
NOT  
APPLICABLE;  
COSTS**

**11361.5 (cont.)**

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs or processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

## 11361.7

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of

**ACCURACY,  
RELEVANCY,  
TIMELINESS  
AND  
COMPLETENESS  
OF RECORD  
SUBJECT TO  
DESTRUCTION;  
ALTERATION  
OF RECORDS;  
QUESTIONS  
ON PRIOR  
CRIMINAL  
RECORD;  
APPLICATION  
OF SECTION**

**11361.7 (cont.)**

Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

## **REGISTRATION OF CONTROLLED SUBSTANCE OFFENDERS**

**11590**

**Persons required to register**

**11591**

**School employee; arrest for controlled substance offense; notice to school authorities**

### **PERSONS REQUIRED TO REGISTER**

**11590**

(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his

or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who, is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357 or 11360, or 11377.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

## **11591**

Every sheriff or chief of police, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall do either of the following:

(1) If such school employee is a teacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district

**SCHOOL  
EMPLOYEE;  
ARREST FOR  
CONTROLLED  
SUBSTANCE  
OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

**11591 (cont.)**

employing such teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein such person is employed. Upon receipt of such notice, the county superintendent of schools shall immediately notify the governing board of the school district employing such person.

(2) If such school employee is a nonteacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing such nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing such person.

(3) If such school employee is a teacher in any private school of this state, he or she shall immediately notify by telephone the private school authority employing such teacher and shall immediately give written notice of the arrest to the private school authority employing such teacher.

# GOVERNMENT CODE

# ADMINISTRATIVE ADJUDICATION

- 11517** Contested case; original hearing;  
agency or administrative law judge
- 11521** Reconsideration
- 11522** Reinstatement of license or  
reduction of penalty

## CONTESTED CASE; ORIGINAL HEARING; AGENCY OR ADMINISTRATIVE LAW JUDGE

### 11517

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply:

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

**11517 (cont.)**

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

**11521****RECONSIDERATION**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

**11522****REINSTATEMENT  
OF LICENSE  
OR REDUCTION  
OF PENALTY**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.



# SPECIFIC OFFENSES

# SPECIFIC OFFENSES LISTED IN EDUCATION CODE SECTIONS 44010, 44011, 44424, and 44346.1

## SEX OFFENSES

**44010**

“Sex offense,” as used in Sections 44020 (Private School Hiring Employee Convicted of Sex Offense), 44237 (Fingerprints; Private School Employees), 44346 (Grounds for Denial of Credential), 44425 (Conviction of Sex or Controlled Substance Offense as Grounds for Revocation by Commission), 44436 (Conviction of Sex Offense or Controlled Substance Offense as Grounds for Revocation and Suspension by County Board), 44836 (Employment of Persons Convicted of Sex Offenses or Controlled Substance Offenses), 45123 (Employment After Conviction of Sex Offense or Controlled Substance Offense: Rehabilitated Controlled Substance Offender), and 45304 (Written Charges for Suspension, Demotion, or Dismissal: provisions for Suspension Pending Determination of Sex Offense or Controlled Substance Offense), means any one or more of the offenses listed below:

## PENAL CODE

(a)	220	Assault to Commit Rape
	243.4(a)(b)(c)	Sexual Battery
	261	Rape
	262	Rape of Spouse by Force/ Fear/Threat
	264.1	Aiding and Abetting Rape
	266	Entice Minor Female for Prostitution/etc.
	266j	Providing or Transporting Child Under 16 for Purpose of Lewd or Lascivious Act
	267	Abduct Minor for Prostitution
	285	Incest
	286	Sodomy
	288	Lewd or Lascivious Acts with Child Under 14 Years

**44010 (cont.)**  
**SEX OFFENSES**

**SEX**  
**OFFENSES**

288a	Oral Copulation
289	Penetration by Foreign Object
311.1	Sent or Brought into State for Sale or Distribution, Matter Depicting Sexual Conduct by Minor
311.2	Sending or Bringing into State for Sale or Distribution; Matter Depicting Sexual Conduct by Minor; Transaction with Minor
311.3	Sexual Exploitation of Child
311.4	Employment or Use of Minor to Perform Prohibited Acts
311.10	Advertising for Sale or Distribution Obscene Matter Depicting a Person Under the Age of 18 Years Engaging in or Simulating Sexual Conduct
311.11	Possession or Control of Matter Depicting Minor Engaging or Simulating Sexual Conduct
313.1	Distribute Harmful Matter to Minors
647(a)	Disorderly Conduct: Solicit Lewd Act
647(d)	Disorderly Conduct: Loiter In or About Toilet
647.6	(After 1-1-88) Annoy/Molest Children
647a	(Before 12/31/87) Annoy/Molest Children
647b	Loitering about Adult Schools; Molesting of Pupils

- (b) 647(5) (Before 9/1961) Vagrancy,  
Lewd: Solicitation of  
Homosexual Activity
- 311(2) (Before 9/1961) Procuring  
Another's Lewd Exposure or  
Excitation of Lewd Thoughts
- (c) 314 (After 9/1961) Indecent  
Exposure
- (d) 311(1) (After 9/1955 but before 9/  
15/1961) Indecent Exposure
- (e) 272 (After 9/1961) Contributing to  
the Delinquency of a Minor  
Involving Lewd or Lascivious  
Conduct
- (f) WELFARE AND INSTITUTIONS CODE 702 (Before 9/  
1961) Contributing to the Delinquency of a Minor Involving  
Lewd and Lascivious Conduct
- (g) Penal Code section 286 Sodomy, 288a Oral Copulation  
(Before 1975)
- (h) Any attempt to commit any of the above-mentioned  
offenses.
- (i) Any commission or attempt in another state, or against the  
laws of the United States, which, if committed in California  
would have been punishable as one or more of the above-  
mentioned offenses.
- (j) Any conviction resulting in requirement to register as a sex  
offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under  
former Article 1 (commencing with Section 6300) of  
Chapter 2 of Part 2 of the Welfare and Institutions Code,  
as repealed by Chapter 928 of the Statutes of 1981.

## SEX OFFENSES

### 44011

"Controlled Substance Offense" as used in Sections 44346 (Grounds for Denial of Application), 44425 (Conviction of Sex or Controlled Substance Offense as Grounds for Revocation of Credential), 44436 (Conviction of Sex Offense or Controlled Substance Offense as Grounds for Revocation and Suspension by County Board), 44836 (Employment After Conviction of Sex Offense or Controlled Substance Offense), 45123 (Employment After Conviction of Sex Offense or Controlled Substance Offense):

# **44011 (cont.) CONTROLLED SUBSTANCE OFFENSES**

Rehabilitated Controlled Substance Offender), means any one or more of the following offenses:

## **HEALTH AND SAFETY CODE**

## **CONTROLLED SUBSTANCE OFFENSES**

(a)	11350	Possess Narcotic Controlled Substance
	11351	Possess/Purchase Narcotic Controlled Substance for Sale
	11351.5	Possession of Cocaine for Sale
	11352	Transport/Sell Narcotic Controlled Substance
	11352.1	Dispensing or Furnishing Drugs Without a License
	11353	Adult Give/etc. Narcotic Controlled Substance to Minor
	11353.5	Adult Give/etc. Controlled Substance to Minor Under 14 Years During School Activity
	11354(a)	Minor Give/etc. Narcotic Controlled Substance to Minor
	11355	Sell/etc. in Lieu of Controlled Substance
	11361	Employ Minor Under 14 Years or Age to Transport/Sell/Etc.
	11366	Keep Place to Sell/etc. Controlled Substance
	11368	Forge/Alter Narcotic Prescription
	11377(a)	Possess Controlled Substance
	11378	Possess Controlled Substance for Sale

11378.5	Possess Phencyclidine for Sale
11379	Transport/Sell Controlled Substance
11379.2	Possession for Sale, or Sale, of Ketamine
11379.5	Transport/Sell/Etc. Phencyclidine
11379.6	Manufacture/Etc. Controlled Substances
11380(a)	Use/Etc. Minor to Violate Controlled Substance Act
11380.5(a)	Furnish/Etc. Minor with Specific Controlled Substance
11382	Sell/Etc. in Lieu of Controlled Substance
11550	Use/Under Influence of Controlled Substance

**CONTROLLED  
SUBSTANCE  
OFFENSES**

(b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

(c) Any offenses committed under former Sections:

11500	Unlawful Possession of a Controlled Substance
11500.5	Unlawful Possession of Controlled Substance for Sale
11501	Unlawful Transportation of Controlled Substance
11502	Inducement of Minor's Violation of Controlled Substance Law
11502.1	Inducement of Minor's Violation of Controlled Substance Law

## 44011 (cont.) CONTROLLED SUBSTANCE OFFENSES

11503	Unlawful Sale, Transportation, etc. of Controlled Substance
11557	Operating or Maintaining Place for Dispensing Controlled Substance
11715	Forging or Altering Prescription
11721	Prohibited Use or Being Under Influence of Controlled Substance
(d)	Any attempt to commit any of the above-mentioned offenses.

## CONVICTION OF CRIME AS GROUNDS FOR REVOCATION

### 44424

(a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or any one or more of the following Penal Code Sections, the Commission shall forthwith revoke the credential:

#### PENAL CODE

187(a) to 191	Murder
192(a)	Voluntary Manslaughter Only
193	Manslaughter—Punishment
194	Death of Victim Within 3 Years and a Day
203	Mayhem
205	Aggravated Mayhem
206	Torture
207	Kidnapping
209(a)	Kidnapping for Ransom
209(b)	Kidnapping to Commit Robbery

209.5	Kidnapping During Carjacking	
210	Pose as Kidnapper to Extort	
210.5	Hostages	
211	Robbery	
212.5	Robbery	
214	Train Robbery	
215	Carjacking	
217.1	Assault on Governmental Officers	
220	Assault to Commit Mayhem, Rape, Sodomy, Oral Copulation, Rape in Concert with Force, Lewd or Lascivious Act on Child, Penetrate with Foreign Object	<b>CONVICTION OF CRIME AS GROUNDS FOR REVOCATION</b>
222	Give Drugs to Aid in Felony	
244	Assault with Caustic Chemicals	
245	Assault with Deadly Weapon or with Great Bodily Injury	
261	Rape: Victim Incapable of Giving Consent	
261.5	Unlawful Sexual Intercourse with Minor (Statutory Rape)	
262	Spousal Rape	
264.1	Rape in Concert with Force/ Violence	
265	Abduct Women for Marriage/ etc.	
266	Entice Minor Female for Prostitution/etc.	

**44424 (cont.)**  
**CONVICTION OF**  
**CRIME AS**  
**GROUND FOR**  
**REVOCATION**

**CONVICTION**  
**OF CRIME AS**  
**GROUND FOR**  
**REVOCATION**

266a	Take Person for Prostitution Without Consent
266b	Take Person for Illicit Relations
266c	Inducing Consent to Sexual Act by Fraud or Fear
266d	Receive Money for Cohabitation Placement
266e	Pay for Prostitution/etc.
266f	Sell Person for Immoral Purpose
266g	Place Wife in Brothel
266h	Pimping
266i	Pandering
266j	Procure/etc. Child Under 14 Years for Lewd or Lascivious Acts
267	Abduct Minor for Prostitution
272	Contribute to the Delinquency of a Minor (if including Lewd & Lascivious Conduct)
273a	Willful Cruelty to Child with Great Bodily Injury/Death
273ab	Assault Resulting in Death of Child under 8
273d	Corporal Punishment or Injury of Child
273f	Send Minor to Immoral Place
273g	Immoral Acts Before Child
278	Child Stealing
285	Incest
286	Sodomy

286.5	Sexual Assault on Animal
288	Lewd or Lascivious Acts With Child Under 14 Years
288.2	Providing Lewd Telephone Messages or Other Material to Minor
288.5	Continuous Sexual Abuse of Child
288a	Oral Copulation
424	Embezzlement by Public Officer
425	Fail to Pay Public Money
484	Theft of Personal Property, Felony Only
484b	Diversion of Funds, Felony Only
484c	Obtain Money by False Voucher, Felony Only
484e	Theft of Access Card, Felony Only
484f	Forge Access, Felony Only
484g	Fraudulent Use of Access Card, Felony Only
484h	Access Card Offenses by Retailer, Felony Only
484i	Possess Access Card Equipment, Felony Only
484j	Publication of Access Card Number with Intent to Defraud, Felony Only
484.1	False Representation to Pawnbroker, Felony Only
485	Appropriate Lost Property, Felony Only

**CONVICTION  
OF CRIME AS  
GROUNDS FOR  
REVOCATION**

**44424 (cont.)  
CONVICTION OF  
CRIME AS  
GROUNDS FOR  
REVOCATION**

487	Grand Theft: Property, Felony Only
487a	Grand Theft: Animal Carcass, Felony Only
487b	Grand Theft: Convert Real Property, Felony Only
487d	Grand Theft: Gold Dust/etc., Felony Only
487e	Grand Theft: Dog, Felony Only
487g	Grand Theft: Dog for Sale or Research, Felony Only
488	Petty Theft, Felony Only
503	Embezzlement
504	Embezzlement Property by Public/Private Officer

**PLUS**

... Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been published as one or more of the offenses specified in this section.

**CREDENTIALS;  
APPLICANTS  
CONVICTED  
OF VIOLENT  
OR SERIOUS  
FELONY**

**44346.1**

The Commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

**VIOLENT FELONIES: PENAL CODE SECTION 667.5**

136.1	Intimidation of Witnesses and Victims (If gang related in violation of 186.22)
187	Murder

664/187	Attempted Murder	
192(a)	Voluntary Manslaughter	
203	Mayhem	
205	Aggravated Mayhem	
207-209.5	Kidnapping	
211	Robbery	
215	Carjacking	
220	Assault with Intent to Commit Mayhem, Rape, Sodomy, or Oral Copulation	
261(a)(2) or (6)	Rape	
262(a)(1) or (4)	Rape of Spouse	
264.1	Rape in Concert with Force	
286	Sodomy by Force or Duress	
288a	Oral Copulation by Force or Duress	<b>VIOLENT FELONIES</b>
288(a)	Lewd or Lascivious Acts with Child Under 14 Years	
288.5	Continuous Sexual Assault of Child	
289(a)	Sexual Penetration With Foreign Object	
451(a) or (b)	Arson Causing Great Bodily Injury	
460(a)	Burglary (First Degree) of Inhabited Residence	
518	Extortion (If gang related in violation of 186.22)	
12022.53	Felony Conviction; Use of Firearm	
12308	Use Destructive Device with Intent to Murder	
12309	Use Destructive Device Causing Great Bodily Injury	

# 44346.1 (cont.) VIOLENT OR SERIOUS FELONIES

12310

Destructive Device Causing  
Death

PLUS

...Any felony where the defendant personally inflicts great bodily injury on those other than accomplices, which has been charged and proved.

...Any felony punishable by death or imprisonment in the state prison for life.

...Any felony in which the defendant uses a firearm, which has been charged and proved.

## SERIOUS FELONIES: PENAL CODE SECTIONS 1192.7 and 1192.8

### SERIOUS FELONIES

136.1

Intimidation of Victims and  
Witnesses

187

Murder

664/187

Attempted Murder

191.5

Gross Vehicular  
Manslaughter While  
Intoxicated (With Personal  
Infliction of Great Bodily  
Injury on any Person Other  
Than an Accomplice, or the  
Personal Use of a Dangerous  
or Deadly Weapon)

192(a)

Voluntary Manslaughter

192(c)(1) or (3)

Manslaughter: Voluntary,  
Involuntary, and Vehicular  
(With Personal Infliction of  
Great Bodily Injury on any  
Person Other Than an  
Accomplice, or the Personal  
Use of a Dangerous or  
Deadly Weapon)

192.5(a) or (c)	Vehicular Manslaughter Committed During Operation of Vessel
203	Mayhem
205	Aggravated Mayhem
207-209.5	Kidnapping
211	Robbery
212.5	Robbery (and Bank Robbery per 1192.7(d))
215	Carjacking
220	Assault with Intent to Commit Mayhem, Rape, Sodomy, Oral Copulation, Rape in Concert with Another, Lascivious Acts Upon a Child, or Penetration of Genitals or Anus with Foreign Object
244	Assault with Caustic Chemicals or Flammable Substance
245(a)(1)	Assault with Deadly Weapon Other Than a Firearm Likely to Produce Great Bodily Injury
245(a)(2)	Assault with Firearm on Person
245(c)	Assault with Deadly Weapon Not a Firearm Likely to Produce Great Bodily Injury on Police Officer/ Fireman
245(d)	Assault with Firearm on Peace Officer/Firefighter
245.2	Transportation Personnel or Passenger; Assault with Deadly Weapon or Means Likely to Produce Great Bodily Injury
245.3	Custodial Officer; Assault with Deadly Weapon or Means Likely to Produce Great Bodily Injury
245.5	Assault with Deadly Weapon or Instrument by any Means Likely to

**SERIOUS FELONIES**

**44346.1 (cont.)  
VIOLENT OR  
SERIOUS  
FELONIES**

**SERIOUS FELONIES**

	Produce Great Bodily Injury or with Stun Gun or Taser on School Employee Engaged in Performance of Duties
246	Shoot at Inhabited Dwelling Vehicle/Etc.
261	Rape
264.1	Rape or Penetration of Genital or Anal Openings by Foreign Object, Etc., Acting in Concert by Force or Violence
286	Sodomy by Force or Duress
288a	Oral Copulation by Force or Duress
288(a)	Lewd or Lascivious Acts with Child Under 14 Years
288.5	Continuous Sexual Abuse of a Child
289(a)	Sexual Penetration with Foreign Object with Force
422	Terrorist Threats
451	Arson
459	Burglary: First Degree
487(d)	Grand Theft Involving a Firearm
4500	Assault by Life Prisoner on a Noninmate
4501	Assault with Deadly Weapon by Prisoner
4503	Confined Person Holds Hostage
12022.53	Felony Conviction; Use of Firearm

12303.3	Wrongful Possession, Explosion, of Destructive Device with Intent to Injure
12034(c) or (d)	Discharge of Firearm from Vehicle
12308	Use Destructive Device with Intent to Murder
12309	Use Destructive Device Causing Great Bodily Injury
12310	Destructive Device Causing Great Bodily Injury or Mayhem Only

**ALSO SERIOUS FELONIES:**

## Vehicle Code Sections

2800.3	Willful Flight or Attempt to Elude a Pursuing Peace Officer Proximately Causes Death or Serious Bodily Injury (Only when offense involves the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon)
23104(b)	Reckless Driving which Proximately Causes Great Bodily Injury (Only when offense involves the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon)
23153	Driving Under the Influence and Causing Bodily Injury to Another Person (Only when offense involves the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon)

**SERIOUS FELONIES**

**44346.1 (cont.)  
VIOLENT OR  
SERIOUS  
FELONIES**

Health and Safety Code Sections

11055(d)(2)

and 11055(f)(1)(A)

Selling, Furnishing,  
Administering, Giving, or  
Offering to Sell, Furnish,  
Administer, or Give to a  
Minor any Heroin, Cocaine,  
Phencyclidine (PCP), or any  
Methamphetamine-Related  
Drug or any of the  
Precursors of  
Methamphetamines as  
Described

11100(a)

Selling, Furnishing,  
Administering, Giving, or  
Offering to Sell, Furnish,  
Administer, or Give to a  
Minor any of the Precursors  
of Methamphetamines as  
Described

**PLUS**

**SERIOUS FELONIES**

...Assault with attempt to  
commit robbery.

...Any felony where the  
defendant personally inflicts  
great bodily injury on those  
other than accomplices.

...Any felony punishable by  
death or imprisonment in the  
state prison for life.

...Any attempt or conspiracy  
to commit any "serious  
felony," other than an  
assault.

...Any felony where the  
defendant personally uses a  
dangerous or deadly  
weapon, or a firearm.

...Any felony offense which  
would also constitute a  
felony violation of 186.22  
(participation in criminal  
street gang).

# LEADING COURT DECISIONS

COURT DECISIONS

# CITATIONS OF LEADING COURT DECISIONS ON PROFESSIONAL PRACTICES

## SHORT TITLE

## CITATIONS—QUICK DIGEST

### BRENNAN

*Governing Board of Nicasio School District of Marin County v. Brennan*  
(1971) 18 Cal.App.3d 396

Marijuana; meaning of unprofessional conduct and moral turpitude: Harmful to welfare of school community indicating unfitness to teach.

### CALDERON

*Board of Education of El Monte School District of Los Angeles v. Calderon*  
(1973) 35 Cal. App.3d 490

Acquittal of criminal charges is not res judicata nor collateral estoppel to bar dismissal for same acts or omissions. "Beyond reasonable doubt."

### CARTWRIGHT

*Cartwright v. Board of Chiropractic Examiners*  
(1976) 16 Cal.3d 762

When a conviction involves moral turpitude so as to warrant revocation or suspension of license to practice profession cannot be determined in abstract but depends upon whether the conviction demonstrated unfitness to practice that profession.

Plea of nolo may not be basis for revocation or suspension unless a statute expressly authorizes such conviction as basis. But see PC 1016(3) Re Felony Nolo.

**CENTRAL VALLEY**

*Central Valley v. Younger*  
(1979) 95 Cal.App.3d 212

Arrest records may be maintained by the Department of Justice to aid law enforcement and criminal justice. However, the dissemination to public employers of arrest records containing nonconviction data does not further law enforcement or criminal justice. Information regarding nonconviction data is properly used in law enforcement, but such information may not be considered by public employers. Such intrusion into the right of privacy guaranteed by Cal. Const., Art. I, is not justified by a compelling state interest. Thus, in a class action challenging the state's alleged practice of supplying public employers with arrest records without editing out arrests which did not result in convictions, the trial court committed reversible error in dismissing after granting defendants' demurrer to the complaint without leave to amend. The allegations of the complaint and the amendment to the complaint stated a prima facie violation of the state constitutional right to privacy.

**COMINGS**

*Comings v. State Board of Education*  
(1972) 23 Cal.App.3d 94

Questions of fitness must be determined on circumstances independent of conviction (of marijuana) because the conviction alone, without a showing that accompanying conduct would support a finding that a teacher is unfit, is not sufficient to substantiate a revocation of credentials.

**DI GENOVA**

*Di Genova v. State Board of Education*  
(1955) 45 Cal. 2d 255

No hearing need be granted where statute mandates revocation upon final conviction of specified offenses. Revocation is a ministerial act in this situation.

**ECKERSLEY**

*Eckersley v. Commission for Teacher Preparation and Licensing*  
(1977) 3 Civil 16094 (unpublished)

Eckersley was convicted of two counts of Penal Code 272 with finding that the offenses did not involve "lewd and/or lascivious conduct." After probation and receipt of a 1203.4, Commission on Teacher Credential moved for mandatory revocation per Education Code section 44425 (previously 13207). Court restrained mandatory revocation, holding that Eckersley's receipt of a 1203.4 entitled him to a fitness hearing. (The court followed rationale of *Newland v. Board of Governor's* (1977) 19 Cal.301 705 in noting that respondent could not obtain a certificate of rehabilitation for a misdemeanor conviction and so could not be required to do so by the Commission. It was a denial of equal protection to misdemeanants).

**ETTINGER**

*Ettinger v. Board of Medical Quality Assurance*  
(1982) 135 Cal.App.3d 853

The proper level of proof to be applied at the administrative level to revoke or suspend a license should be clear and convincing to a reasonable certainty, and not a mere preponderance of the evidence.

**ROBERT G.**

*Los Angeles County Department of  
Children and Family Services v.  
Robert G.*

79 Cal.App.4<sup>th</sup> 1408;  
(2000) 94Cal.Rptr.2d 818

“The juvenile court did not abuse its discretion when it granted the petition of a school district to disclose confidential information from a juvenile court file that a school teacher had sexually abused his minor daughters.”

“Confidentiality laws regarding the disclosure of juvenile court records are meant to protect the child’s privacy and not to protect adults from the consequences of their acts.”

In this case, the court determined that the father had no valid argument that the school district should not inform the California Commission on Teacher Credentialing of the juvenile court’s finding that he sexually abused his two daughters.

**GARDNER**

*Gardner v. Commission on  
Professional Competence and  
Tustin School District*  
(1985) 164 Cal.App.3d 1035

To dismiss a teacher from a particular school for cause, the proper standard of proof to be applied in the administrative proceeding is the preponderance or weight of evidence rather than the higher clear and convincing proof to a reasonable certainty required in teacher license revocation proceedings.

**PATRICIA H.**

*Patricia H. v. Berkeley Unified School District*  
(1993) 803 F.Supp.1288

Finding of California Commission on Teacher Credentialing that high school teacher molested female students collaterally estopped teacher from denying, in action for hostile sexual harassment in violation of Title IX, that he had molested students. As a teacher and credential holder he had both notice and opportunity to present evidence under oath.

**JACK M.**

*Board of Education of Long Beach v. Jack M.*  
(1977) 19 Cal.3d 691

Teacher arrested for public sexual offense (homosexual solicitation) but where no charges were filed, not unfit to teach per se (i.e., without fitness hearing), and may not be dismissed without hearing. Evidence showed conformance with Morrison standards.

**METZGER**

*Board of Trustees Los Angeles Junior College District of Los Angeles v. Metzger*  
(1972) 8 Cal.3d 206

Dismissal for unprofessional conduct reversed where teacher used allegedly obscene literature in English class. (Decided on absence of substantial evidence.)

**MOCHSON**

*Board of Education v. Commission on Professional Competence v. Mochson*  
(1982) 127 Cal.App.3d 522

Dismissal of classroom teacher for incompetency and unsatisfactory service. Sets forth 68 particular acts/omissions from which incompetency was established.

**MORRISON**

*Morrison v. State Board of Education*  
(1969) 1 Cal.3d 214

Meaning of “immoral”, “unprofessional”, and “moral turpitude” must depend on, and thus relate to, the occupation involved ...” No person can be denied government employment because of factors unconnected with the responsibilities of that employment. (See cases cited at P. 234, 235)

**MOSER**

*Moser v. State Board of Education*  
(1972) 22 Cal.App.3d 988

Revocation of credential upheld where P. masturbated in public view in a public place. Held unfitness per se. (See Pryor for discussion of what a public place is.)

**NEWLAND**

*Newland v. Board of Governors for Community Colleges*  
(1977) 19 Cal.3d 705

Prior mandatory revocation does not bar later fitness hearing where Penal Code 1203.4 relief is obtained.

**PETTIT**

*Pettit v. State Board of Education*  
(1973) 10 Cal.App.3d 29

Unfitness to teach was established by expert testimony consisting of opinion, evidence of three elementary school superintendents, based on D’s oral copulation of three men not her husband at a party, and her masked appearance on a TV show advocating adultery and wife swapping.

**PICTON**

*Picton v. Anderson Union High School District*  
50 Cal.App 4<sup>th</sup> 726 (1996)

A school district's demurrer to a former high school teacher's breach of contract action arising from disclosures the district made to the Commission and the Committee of Credentials, resulting in the suspension of the teacher's credential was properly sustained, even though the settlement agreement between the parties contained a nondisclosure provision specifically providing that the district delete the rape charge from the formal statement of charges, the district was under a legal duty of the teacher's resignation and to provide the Committee of Credentials with all of the facts that pursuant to 5 Cal. Code Regs. Sections 80308, 80310, and 80311, to notify the Commission of the teacher's resignation and to provide the Committee with all of the facts that constituted the cause for the underlying disciplinary action. To the extent the agreement could be construed as foreclosing the transmission of such facts that portion of the agreement was illegal as a matter of public policy and could not be enforced.

**PRYOR**

*Pryor v. Municipal Court of Los Angeles*  
(1979) 25 Cal.3d 238

A closed room made available to different members of the public at successive intervals is not a "place open to the public" within the meaning of PC 647(a).

Discusses meaning of "lewd and dissolute;" 647(a) prohibits such conduct only in a public place..."

Offense requires a touching in addition to the solicitation.

**PURIFOY**

*Purifoy v. State Board of Education*  
(1973) 30 Cal.App.3d 187

Revocation of credential by State Board resulting in dismissal from position requiring certification qualifications is not lack of due process as to dismissals where revocation was mandatory.

**CARL S.**

*Carl S. v. Commission on Teacher Preparation and Licensing*  
(1981) 126 Cal.App.3d 365

Revocation of credential by Commission on Teacher Preparation and Licensing set aside where teacher had filed notice of defense but failed to appear at administrative hearing, and uncorroborated hearsay was pressed in support of allegations with his objection. Notice of defense was deemed to be objection to all charges.

**SARAC**

*Sarac v. State Board of Education*  
(1967) 249 Cal.App.2d 58

Court may exercise independent judgment on weight of evidence; and must be sustained on appeal if there is any credible, competent evidence to support its findings.

One homosexual act on public beach sufficient to justify revocation.

**SIMS**

*People v. Sims*  
(1982) 32 Cal.App.3d 468

Prior administrative trial and decision effects collateral estoppel to subsequent criminal trial on same facts if administrative agency resolved issues of fact and parties had adequate opportunity to litigate their claims. (But prior criminal acquittal does not cut off subsequent administrative trial. See *Calderon*, Supra.)

**SWAN**

*Board of Education of Los Angeles v. Swan*  
(1953) 41 Cal.2d 546

Dismissal of insubordinate teacher upheld; violation of Rules of Ethical Conduct is “unprofessional conduct”; violation of school rules, defiance of school authority, etc.

**STUBBLEFIELD**

*Board of Trustees v. Stubblefield*  
(1971) 16 Cal.App.3d 820

Heterosexual intercourse in automobile with female student (Jr. College) is immoral conduct showing unfitness to teach.

**USHANA, et al.**

*State of California v. Ushanda D. et al., Real Parties in Interest*  
(1992) 8 Cal.App.4<sup>th</sup> 954

While Education Code section 44346 was designed to protect students from exposure to sex offenders, it does not confer a tort cause of action on molested students for the government’s negligent investigation of the teacher.

**VOGULKIN**

*Vogulkin v. State Board of Education*  
(1961) 194 Cal.App.2d 424

Mandatory revocation or denial of credential to person adjudged a sex psychopath is constitutional.

**WACHS**

*Wachs v. Board of Medical Quality Assurance*  
(1985) 169 Cal.App.3d 219

Diversion per Penal Code 1000.5 goes into effect only upon the successful completion of diversion program, and does not bar disciplinary action where accusation is filed before diversion is completed.

**WATSON**

*Watson v. State Board of Education*  
(1971) 22 Cal.App.3d 559

Six offenses involving alcohol in preceding ten year period, including one offense while application for credential pending was enough to constitute unfitness for teaching.

**WOODLAND**

*Woodland Joint Unified School District v. Commission on Professional Competence*  
(1992) 2 Cal.App.4th 1429

“Evident unfitness for service” means not suited to teaching by reason of temperamental defects or inadequacies. It connotes a fixed character trait.

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